(19,443.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 343.

JOSEPH RALPH BURTON, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

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UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States to the honorable the judge of the district court of the United States for the eastern division of the eastern judicial district of Missouri, Greeting:

Because, in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said district court, before you, at the November term, 1903, thereof, between The United States of America and Joseph Ralph Burton, defendant, a manifest error hath happened, to the great damage of the said defendant, Joseph Ralph Burton, as by his complaint appears;

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the said record and proceedings aforesaid, at the city of Washington, District of Columbia, and filed in the office of the clerk of the Supreme Court of the United States, on or before thirty days from the date hereof, to the end that the record and proceedings aforesaid being inspected, the United States Supreme Court may cause further to be done therein to correct that error, what of right,

and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 9th day of July in the year of our Lord one thousand nine hundred and four.

JAMES H. McKENNEY,
Clerk Supreme Court United States.

Allowed by
DAVID J. BREWER,
Associate Justice Sup. Ct. U. S.

[Endorsed:] No. 4992 The United States *vs.* Joseph Ralph Burton Writ of error to Supreme Court Filed Jul- 23 1904 James R. Gray clerk.

Return to Writ.

UNITED STATES OF AMERICA, }
Eastern Division of the Eastern District of Missouri, } *ss:*

In obedience to the command of the within writ, I herewith transmit to the United States Supreme Court a duly certified transcript of the record and proceedings in the within entitled case, with all things concerning the same.

In witness whereof, I hereunto subscribe my name, and affix the seal of said district court, at office in the city of St. Louis, this 3rd day of August, A. D. 1904.

{ Seal of the United States District Court, Eastern Division of the Eastern Judicial District of Missouri. }

JAMES R. GRAY,
Clerk of said Court.

The United States of America to the United States of America, Greeting:

You are hereby cited and admonished to be and appear in the United States Supreme Court, at the city of Washington, thirty days from and after the day that this citation bears date, pursuant to a writ of error, filed in the clerk's office of the district court of the United States for the eastern division of the eastern judicial district of Missouri, wherein Joseph Ralph Burton is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the

judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable David J. Brewer, associate justice of the Supreme Court of the United States, this 9th day of July, in the year of our Lord one thousand nine hundred and four.

DAVID J. BREWER,
Associate Justice.

Service of citation hereby waived this 23 day of July 1904.
BERT. D. NORTONI,
Ass't U. S. Attorney.

[Endorsed:] No. 4992 The United States *vs.* Joseph Ralph Burton Citation Filed Jul- 23 1904 James R. Gray, clerk.

UNITED STATES OF AMERICA, }
Eastern District of Missouri, } *ss:*

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

Be it remembered that heretofore, to-wit: on the 23rd day of January, 1904, there was returned into said court and filed in the clerk's office thereof, an indictment which is in words and figures as follows, to-wit:

UNITED STATES OF AMERICA, }
Eastern Division of the Eastern Judicial District of Missouri, } *ss:*

In the District Court of the United States within and for the Eastern Division of the Eastern Judicial District of Missouri, at the November Term, 1903, of said Court.

The grand jurors of the United States, empaneled, sworn, and charged at the term aforesaid, of the court aforesaid, on their oaths present: That Joseph Ralph Burton was at all of the times and dates

hereinafter mentioned, and now is a member of the Congress of the United States of America, to wit: a Senator from the State of Kansas, duly elected and chosen by the legislature of said State of Kansas for a term of six years, expiring on the 4th day of March, A. D., 1907, and was at all of the said times duly qualified, admitted and acting as such Senator.

And the grand jurors aforesaid, on their oaths aforesaid, do further present: That on the 26th day of March, A. D., 1903, at the city of St. Louis, in the State of Missouri, and within the division and district aforesaid, and within the jurisdiction of the court aforesaid, the said Joseph Ralph Burton, Senator as aforesaid, did unlawfully, knowingly, willfully and corruptly take, accept and receive from the Rialto Grain and Securities Company (a corporation duly organized under the laws of the State of Missouri) the sum of five hundred dollars, lawful money of the United States, of the value of five hundred dollars (the particular kinds and denominations of which are to the grand jurors aforesaid unknown) as compensation for the services of him, the said Joseph Ralph Burton, Senator as aforesaid, theretofore, to-wit: on the 22nd day of November, A. D. 1902, and on divers other days between said last mentioned date and the said 26th day of March, A. D. 1903, rendered by him, the said Joseph Ralph Burton, Senator, as aforesaid, to the said Rialto Grain and Securities Company before the Post Office Department of the United States, in a certain matter then and there pending before said Post Office Department, in which the said United States was directly interested, that is to say: whether the said Rialto Grain and Securities Company had violated the provisions of section 5480 of the Revised Statutes of the United States, in that it (said company) had through its officers, agents and servants devised a scheme and artifice, to defraud, which was to be effected by said Rialto Grain and Securities Company, through and by its officers, agents and servants, in opening correspondence and communication with divers persons resident within the United States, by means of the Post Office Establishment of the United States, and whether said Rialto Grain and Securities Company, by its said officers, agents and servants in and for executing said scheme and artifice to defraud, had placed or deposited any letter or packet in any post office of the United States, to the end and for the purpose of enabling the Postmaster General of the United States, in pursuance of the authority vested in him, by law, to ascertain, find and determine from the evidence satis-

factory to him, the said Postmaster General, whether he should order and direct the Postmaster at St. Louis, Missouri, not to deliver to the said Rialto Grain and Securities Company, but to return with the word "Fraudulent" plainly written or stamped upon the outside (as authorized by Section 3929 and Section 4041 of the Revised Statutes of the United States, as amended by the Act of Congress of March 2, 1895) any and all letters addressed to said Rialto Grain and Securities Company, and sent to or through the Post Office at St. Louis, Missouri, by means of the post office establishment of the United States.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further present: that the services so as aforesaid rendered to the said Rialto Grain and Securities Company, by the said Joseph Ralph Burton, Senator as aforesaid, consisted in part of visits to the said Postmaster General, the Chief Post Office Inspector, and other officers of the Post Office Department of the United States, and of representations and statements made to the said Postmaster General, the said Chief Post Office Inspector, and said other officers, which said visits, representations and statements so as aforesaid made by the said Joseph Ralph Burton, were made with a view and for the purpose of inducing said Postmaster General, the said Chief Post Office Inspector, and said other officers, to decide the question so as aforesaid pending before said Post Office Department in a manner favorable to the said Rialto Grain and Securities Company, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

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Second Count. And the Grand Jurors aforesaid, on their oaths aforesaid, do further present: that Joseph Ralph Burton was at all of the times and dates hereinafter mentioned, and now is a member of the Congress of the United States of America, to-wit: a Senator from the State of Kansas, duly elected and chosen by the Legislature of said State of Kansas for a term of six years, expiring on the 4th day of March, A. D., 1907, and was at all of said times duly qualified, admitted and acting as such Senator.

And the Grand Jurors aforesaid on their oaths aforesaid, do further present: that on the 26th day of March, A. D. 1903, at the City of St. Louis, in the State of Missouri, and within the Division and District aforesaid, and within the jurisdiction of the court aforesaid, the said Joseph Ralph Burton, Senator as aforesaid, did unlawfully, knowingly, willfully and corruptly take, accept and receive from the Rialto Grain and Securities Company (a corporation duly organized under the laws of the State of Missouri), the sum of five hundred dollars (the particu-

lar kinds and denominations of which are to the Grand Jurors aforesaid unknown) as compensation for the services of him, the said Joseph Ralph Burton, Senator as aforesaid, theretofore, to-wit: on the 22nd day of November, A. D. 1902, and on divers other days between said last mentioned date and the said 26th day of March, A. D., 1903, rendered by him, the said Joseph Ralph Burton, Senator as aforesaid to the said Rialto Grain and Securities Company before the Post Office Department of the United States, in a certain matter then and there
8 pending before said Post Office Department, in which the said United States was indirectly interested, that is to say: whether the said Rialto Grain and Securities Company had violated the provisions of Section 5480 of the Revised Statutes of the United States, in that it (said company) had through its officers, agents and servants devised a scheme and artifice to defraud, which was to be effected by said Rialto Grain and Securities Company, through and by its officers, agents and servants, in opening correspondence and communication with divers persons resident within the United States, and whether said Rialto Grain and Securities Company, by its said officers, agents and servants, in and for executing said scheme and artifice to defraud, had placed or deposited any letter or packet in any post office of the United States, to the end and for the purpose of enabling the Postmaster General of the United States, in pursuance of the authority vested in him by law, to ascertain, find and determine from evidence satisfactory to him, the said Postmaster General, whether he should order and direct the Postmaster at St. Louis, Missouri, not to deliver to the said Rialto Grain and Securities Company, but to return with the word "Fraudulent" plainly written or stamped upon the outside (as authorized by Section 3939 and Section 4041 of the Revised Statutes of the United States, as amended by the Act of Congress of March 2, 1895) any and all letters addressed to said Rialto Grain and Securities Company, and sent to or through the post office at St. Louis, Missouri, by means of the post office establishment of the United States.

And the Grand Jurors, aforesaid, on their oaths aforesaid, do further present: that the services so as aforesaid rendered to the said Rialto Grain and Securities Company, by the said Joseph Burton, Senator, as aforesaid, consisted in part of visits to the said Postmaster General, the Chief Post Office Inspector, and other officers of the post office department of the United States, and of representations and statements made to the said Postmaster General, the said Chief Post Office Inspector, and said other officers, which said visits, representations and
9 statements so as aforesaid made by the said Joseph Ralph Burton, were made with the view and for the pur-

pose of inducing said Postmaster General, the said Chief Post Office Inspector and said other officers to decide the question so as aforesaid pending before said Post Office Department, in a manner favorable to the said Rialto Grain and Securities Company, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

Third Count: And the Grand Jurors aforesaid, on their oaths aforesaid, do further present: that Joseph Ralph Burton was at all of the times and dates hereinafter mentioned, and now is a member of the Congress of the United States of America, to-wit: a Senator from the State of Kansas, duly elected and chosen by the Legislature of said State of Kansas for a term of six years, expiring on the 4th day of March, A. D. 1907, and was at all of said times duly qualified, admitted and acting as such Senator.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further present: that on the 26th, day of March, A. D. 1903, at the City of St. Louis, in the State of Missouri, and within the Division and District aforesaid, and within the jurisdiction of the Court aforesaid, the said Joseph Ralph Burton, Senator as aforesaid, did unlawfully, knowingly, willfully and corruptly take, accept and receive from one W. D. Mahaney an officer and employe of the Rialto Grain and Securities Company (a corporation) the sum of five hundred dollars, lawful money of the United States, of the value of five hundred dollars (the particular kinds and denominations of which are to the Grand Jurors aforesaid unknown) as compensation for the services of him, the said Joseph Ralph Burton, Senator as aforesaid, theretofore to-wit: on the 22nd day of November, A. D. 1902, and on divers other days between said last mentioned date and the said 26th day of March, A. D. 1903, rendered by him, the said Joseph Ralph Burton, Senator as aforesaid, to the Rialto Grain and Securities Company (a corporation as aforesaid) before the Post Office Department of the United States, in a certain matter then and there pending before said Post Office Department, in which the said United States was directly interested, that is to say: whether the said Rialto Grain and Securities Company had violated the provisions of Section 5480 of the Revised Statutes of the United States, in that, it (said Company) had through its officers, agents and servants devised a scheme and artifice to defraud, which was to be effected by said Rialto Grain and Securities Company, through and by its officers, agents and servants, in opening correspondence and communication with divers persons, resident within the United States, by means of the Post Office establishment of the United

States, and whether said Rialto Grain and Securities Company, by its said officers, agents and servants, in and for executing said scheme and artifice to defraud, had placed or deposited any letter or packet in any post office of the United States, to the end and for the purpose of enabling the Postmaster General of the United States, in pursuance of the authority vested in him by law, to ascertain, find and determine from evidence satisfactory to him, the said Postmaster General, whether he should order and direct the Postmaster at St. Louis, Missouri, not to deliver to the said Rialto Grain and Securities Company, but to return with the word "Fraudulent" plainly written or stamped upon the outside (as authorized by Section 3929 and Section 4041 of the Revised Statutes of the United States, as amended by the Act of Congress of March 2nd., 1905) any and all letters addressed to said Rialto Grain and Securities Company, and sent to or through the Post Office at St. Louis, Missouri, by means of the Post Office establishment of the United States.

And the Grand Jurors aforesaid, on their oaths aforesaid do further present: that the services so as aforesaid rendered to the said Rialto Grain and Securities Company, by the said Joseph Ralph Burton, Senator, as aforesaid, consisted
11 in part of visits to the said Postmaster General, the Chief Post Office Inspector, and other officers of the Post Office Department of the United States, and of representations and statements made to the said Postmaster General, the said Chief Post Office Inspector, and said other officers, which said visits, representations and statements so as aforesaid made by the said Joseph Ralph Burton, were made with a view and for the purpose of inducing said Postmaster General, the said Chief Post Office Inspector, and said other officers, to decide the question so as aforesaid pending before said Post Office Department, in a manner favorably to the said Rialto Grain and Securities Company, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

Fourth Count: And the Grand Jurors aforesaid, on their oaths aforesaid, do further present: that Joseph Ralph Burton was at all of the times and dates hereinafter mentioned, and now is a member of the Congress of the United States, of America, to-wit: Senator from the State of Kansas, duly elected and chosen by the Legislature of said State of Kansas for a term of six years, expiring on the 4th day of March, A. D., 1907, and was at all of said times duly qualified, admitted and acting as such Senator.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further present: that on the 26th day of March, A. D. 1903, at the City of St. Louis, in the State of Missouri, and within the Division and District aforesaid, and within the jurisdiction of the court aforesaid, the said Joseph Ralph Burton, Senator as aforesaid, did unlawfully, knowingly, willfully and corruptly take, accept and receive from Hugh C. Dennis, the sum of Five Hundred dollars, lawful money of the United States, of the value of Five hundred dollars (the particular kinds and denominations of which are to the Grand Jurors aforesaid unknown) as compensation for the services of him, the said Joseph Ralph Burton, Senator as aforesaid,
12 theretofore, to-wit: on the 22nd day of November, A. D., 1902, and on divers other days between said last mentioned date and the said 26th day of March, A. D. 1903, rendered by him, the said Joseph Ralph Burton, Senator, as aforesaid, to the Rialto Grain and Securities Company, before the Post Office Department of the United States, in a certain matter then and there pending before said Post Office Department, in which the said United States was directly interested, that is to say: whether the said Rialto Grain and Securities Company had violated the provisions of Section 5480 of the Revised Statutes of the United States, in that it (said company) had through its officers, agents and servants devised a scheme and artifice to defraud, which was to be effected by said Rialto Grain and Securities Company, through and by its officers, agents and servants, in opening correspondence and communication with divers persons resident within the United States, by means of the post office establishment of the United States, and whether said Rialto Grain and Securities Company, by its said officers, agents and servants, in and for executing said scheme and artifice to defraud, had placed or deposited any letter or packet in any post office of the United States, to the end and for the purpose of enabling the Postmaster General of the United States, in pursuance of the authority vested in him by law, to ascertain, find and determine from evidence satisfactory to him, the said Postmaster General, whether he should order and direct the Postmaster at St. Louis, Missouri, not to deliver to the said Rialto Grain and Securities Company, but to return with the word "Fraudulent" plainly written or stamped upon the outside (as authorized by Section 3929 and Section 4041 of the Revised Statutes of the United States, as amended by the Act of Congress of March 2nd, 1895) any and all letters addressed to said Rialto Grain and Securities Company, and sent to or through the Post Office at St. Louis, Missouri, by means of the post office establishment of the United States.

13 And the Grand Jurors aforesaid, on their oaths aforesaid, do further present: that the services so as aforesaid rendered to the said Rialto Grain and Securities Company, by the said Joseph Ralph Burton, Senator, as aforesaid, consisted in part of visits to the said Postmaster General, the Chief Post Office Inspector, and other officers of the Post Office Department of the United States, and of representations and statements made to the said Postmaster General, the said Chief Post Office Inspector, and said other officers, which said visits, representations and statements, so as aforesaid made by the said Joseph Ralph Burton, were made with the view and for the purpose of inducing said Postmaster General, the said Chief Post Office Inspector, and said other officers, to decide the question so as aforesaid pending before said Post Office Department, in a manner favorable to the said Rialto Grain and Securities Company, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

Fifth Count. And the Grand Jurors aforesaid, on their oaths aforesaid, do further present: that Joseph Ralph Burton was at all of the times and dates hereinafter mentioned, and now is a member of the Congress of the United States of America, to-wit: a Senator from the State of Kansas, duly, elected and chosen by the Legislature of said State of Kansas for a term of six years, expiring on the 4th day of March, A. D., 1907, and was at all of said times duly qualified, admitted and acting as such Senator.

And the Grand Jurors aforesaid, on their oaths aforesaid do further present: that on the 26th day of March, A. D., 1903, at the City of St. Louis, in the State of Missouri, and within the Division and District aforesaid, and within the jurisdiction of the Court aforesaid, the said Joseph Ralph Burton, Senator as aforesaid, did unlawfully, knowingly, willfully and
14 corruptly take, accept and receive from W. D. Mahaney, an employe of Hugh C. Dennis the sum of five hundred dollars, lawful money of the United States, of the value of five hundred dollars (the particular kinds and denominations of which are to the Grand Jurors aforesaid unknown as compensation for the services of him, the said Joseph Ralph Burton, Senator as aforesaid, theretofore, to-wit: on the 22nd day of November, A. D., 1902, and on divers other days between said last mentioned date and the said 26th day of March, A. D., 1903, rendered by him, the said Joseph Ralph Burton, as aforesaid to Hugh C. Dennis before the Post Office Department of the United States, in a certain matter then and there pending before said Post Office Department, in which the said United States was directly interested, that is to say: whether the said

Hugh C. Dennis had violated the provisions of Section 5480 of the Revised Statutes of the United States, in that he, the said Hugh C. Dennis had devised a scheme and artifice to defraud, which was to be effected by him, the said Hugh C. Dennis, in opening correspondence and communication with divers persons resident within the United States, by means of the post office establishment of the United States, and whether the said Hugh C. Dennis in and for executing said scheme and artifice to defraud, had placed or deposited any letters or packet in any post office of the United States, to the end and for the purpose of enabling the Postmaster General of the United States, in pursuance of the authority vested in him by law, to ascertain, find and determine from evidence satisfactory to him, the said Postmaster General, whether he, the said Postmaster General, should order and direct the Postmaster at St. Louis, Missouri, not to deliver to the said Hugh C. Dennis, but to return with the word "Fraudulent" plainly written or stamped upon the outside (as authorized by Section 3929 and Section 4041 of the Revised Statutes of the United States, as amended by the Act of Congress of March 2nd., 1895), any and all letters addressed to the said Hugh C. Dennis, and sent to or through the post office at St. Louis, Missouri, by means of the post office
15 establishment of the United States.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further present: that the services, so as aforesaid, rendered to the said Hugh C. Dennis by the said Joseph Ralph Burton, Senator, as aforesaid, consisted in part of visits to the said Postmaster General, the said Chief Post Office Inspector, and other officers of the Post Office Department of the United States, and of representations and statements made to the said Postmaster General, the said Chief Post Office Inspector, and said other officers, which said visits, representations and statements, so as aforesaid made by the said Joseph Ralph Burton, were made with a view and for the purpoe of inducing said Postmaster General, the said Chief Post Office Inspector, and said other officers to decide the question so as aforesaid pending before said Post Office Department, in a manner favorable to the said Hugh C. Dennis, contrary to the form of the Statutes in such case made and provided and against the peace and dignity of the United States.

16 Sixth Count. And the Grand Jurors aforesaid, on their oaths aforesaid, do further present: that Joseph Ralph Burton was at all of the times and dates herein after mentioned, and now is a member of the Congress of the United States of America, to-wit a Senator from the State of Kansas, duly elected and chosen by the Legislature of said State of

Kansas for a term of six years, expiring on the 4th day of March, A. D., 1907, and was at all of said times duly qualified, admitted and acting as such Senator.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further present: that on the 22nd day of November, A. D., 1902, at the City of St. Louis, in the State of Missouri, and within said Division and District aforesaid, and within the jurisdiction of the Court aforesaid, the said Joseph Ralph Burton, Senator, as aforesaid, did unlawfully, knowingly, willfully and corruptly, take, accept and receive a certain check for the payment of money, for the sum of five hundred dollars, which said check bore date November 22, 1902, and was made and drawn by the Rialto Grain and Securities Company, by Hugh C. Dennis, Treasurer, President, upon the Commonwealth Trust Company of St. Louis, payable to the order of the said Joseph Ralph Burton, by the name of J. R. Burton, and by the said Joseph Ralph Burton, by the name of J. R. Burton duly endorsed, and then and there by the said Commonwealth Trust Company, paid in lawful money of the United States to the said Joseph Ralph Burton, as compensation for the services of him, the said Joseph Ralph Burton, Senator as aforesaid, theretofore, to-wit: on the 22nd day of November, A. D. 1902, and on divers other days between said last mentioned date and the said 26th day of March, A. D., 1903, rendered by him, the said Joseph Ralph Burton, Senator, as aforesaid, to the said Rialto Grain and Securities Company (a corporation duly organized under the laws of the State of Missouri) before the Post Office De-
17 partment of the United States, in a certain matter then and there pending before said Post Office Department, in which the said United States was directly interested, that is to say: whether the said Rialto Grain and Securities Company had violated the provisions of Section 5480 of the Revised Statutes of the United States, in that it (said Company) had through its officers, agents and servants devised a scheme and artifice to defraud, which was to be effected by said Rialto Grain and Securities Company, through and by its officers agents and servants, in opening correspondence and communication with divers persons resident within the United States, by means of the Post Office establishment of the United States, and whether said Rialto Grain and Securities Company, by its said officers, agents and servants, in and for executing said scheme and artifice to defraud, had placed or deposited any letter or packet in any post office of the United States, to the end and for the purpose of enabling the Postmaster General of the United States, in pursuance of the authority vested in him by law, to ascertain, find and determine from evidence satisfactory to him, the said Postmaster General, whether he,

the said Postmaster General should order and direct the Postmaster at St. Louis, Missouri, not to deliver to the said Rialto Grain and Securities Company, but to return with the word "Fraudulent" plainly written or stamped upon the outside (as authorized by Section 3929 and Section 4041 of the Revised Statutes of the United States, as amended by the Act of Congress of March 2nd., 1895) any and all letters addressed to said Rialto Grain and Securities Company, and sent to or through the Post Office at St. Louis, Missouri, by means of the Post Office establishment of the United States.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further present: that the services so as aforesaid rendered to
18 the said Rialto Grain and Securities Company, by the said Joseph Ralph Burton, Senator, as aforesaid, consisted in part of visits to the said Postmaster General, the Chief Post Office Inspector, and other officers of the Post Office Department of the United States, and of representations and statements made to the said Postmaster General, the said Chief Post Office Inspector, and said other officers, which said visits, representations and statements so as aforesaid made by the said Joseph Ralph Burton, were made with the view and for the purpose of inducing said Postmaster General, the said Chief Post Office Inspector, and said other officers, to decide the question so as aforesaid pending before said Post Office Department, in a manner favorable to the said Rialto Grain and Securities Company, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

Seventh Count: And the Grand Jurors aforesaid, on their oaths aforesaid, do further present: that Joseph Ralph Burton was at all of the times and dates hereinafter mentioned and now is a member of the Congress of the United States of America, to-wit: a Senator from the State of Kansas, duly elected and chosen by the Legislature of said State of Kansas for a term of six years, expiring on the 4th day of March, A. D., 1907, and was at all of said times duly qualified, admitted and acting as such Senator.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further present: that on the 15th day of December, A. D., 1902, at the City of St. Louis, in the State of Missouri, and within said Division and District aforesaid, and within the jurisdiction of the Court aforesaid, the said Joseph Ralph Burton, Senator, as aforesaid, did unlawfully, knowingly, wilfully and corruptly, take, accept and receive a certain check for the payment of money, for the sum of five hundred

dollars, which said check bore date December 15th 1902, and was made and drawn by the Rialto Grain and Securi-
19 ties Company, by Hugh C. Dennis, President, upon the Commonwealth Trust Company of St. Louis, payable to the order of said Joseph Ralph Burton, by the name of J. R. Burton, and by the said Joseph Ralph Burton, by the name of J. R. Burton, duly endorsed, and then and there by the said Commonwealth Trust Company paid in lawful money of the United States to the said Joseph Ralph Burton, as compensation for the services of him, the said Joseph Ralph Burton, Senator as aforesaid, theretofore, to-wit: on the 22nd day of November, A. D., 1902, and on divers other days between said last mentioned date and the said 26th day of March, A. D., 1903, rendered by him, the said Joseph Ralph Burton, Senator, as aforesaid, to the said Rialto Grain and Securities Company (a corporation duly organized under the laws of the State of Missouri) before the Post Office Department of the United States, in a certain matter then and there pending before said Post Office Department, in which the said United States was directly interested, that is to say: whether the said Rialto Grain and Securities Company had violated the provisions of Section 5480 of the Revised Statutes of the United States, in that it (said Company) had through its officers, agents and servants devised a scheme and artifice to defraud, which was to be effected by said Rialto Grain and Securities Company, through and by its officers, agents and servants, in opening correspondence and communication with divers persons resident within the United States, by means of the Post Office Establishment of the United States, and whether said Rialto Grain and Securities Company, by its said officers, agents and servants, in and for executing said scheme and artifice to defraud, had placed or deposited any letter or packet in any post office of the United States, to the end and for the purpose of enabling the Postmaster General of the United States, in pursuance of the authority vested in him by law, to ascer-
20 tain, find and determine from evidence satisfactory to him, the said Postmaster General, whether he, the said Postmaster General, should order and direct the Postmaster at St. Louis, Missouri, not to deliver to the said Rialto Grain and Securities Company, but to return with the word "Fraudulent" plainly written or stamped upon the outside (as authorized by Section 3929 and Section 4041 of the Revised Statutes of the United States, as amended by the Act of Congress of March 2nd., 1895) any and all letters addressed to said Rialto Grain and Securities Company, and sent to or through the Post office at St. Louis, Missouri, by means of the Post Office establishment of the United States.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further present: that the services so as aforesaid rendered to the said Rialto Grain and Securities Company, by the said Joseph Ralph Burton, Senator, as aforesaid, consisted in part of visits to the said Postmaster General, the Chief Post Office Inspector, and other officers of the Post Office Department of the United States, and of representations and statements made to the said Postmaster General, the said Chief Post Office Inspector, and said other officers, which said visits, representations and statements so as aforesaid made by the said Joseph Ralph Burton, were made with the view and for the purpose of inducing said Postmaster General, the said Chief Post Office Inspector, and said other officers, to decide the question so as aforesaid pending before said Post Office Department, in a manner favorable to the said Rialto Grain and Securities Company, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

Eighth Count: And the Grand Jurors aforesaid, on their oaths aforesaid, do further present: that Joseph Ralph Burton was at all of the times and dates hereinafter mentioned, and now is a member of the Congress of the United States of America, to-wit: a Senator from the State of Kansas,
21 duly elected and chosen by the Legislature of said State of Kansas for a term of six years, expiring on the 4th day of March, A. D., 1907, and was at all of said times duly qualified, admitted and acting as such Senator.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further present: that on the 22nd day of January, A. D. 1903, at the City of St. Louis, in the State of Missouri, and within said Division and District aforesaid, and within the jurisdiction of the Court aforesaid, the said Joseph Ralph Burton, Senator as aforesaid, did unlawfully, knowingly, willfully and corruptly, take, accept and receive a certain check for the payment of money, for the sum of five hundred dollars, which said check bore date of January 22nd 1903, and was made and drawn by the Rialto Grain and Securities Company, by Hugh C. Dennis, President, upon the Commonwealth Trust Company, of St. Louis, payable to the order of the said Joseph Ralph Burton, by the name of J. R. Burton, and by the said Joseph Ralph Burton, by the name of J. R. Burton, duly endorsed, and then and there by the said Commonwealth Trust Company paid in lawful money of the United States to the said Joseph Ralph Burton, as compensation for the services of him, the said Joseph Ralph Burton, Senator as aforesaid, theretofore, to-wit: on the 22nd day of November, A. D., 1902, and on divers other days between said last mentioned date

and the 26th day of March, A. D., 1903, rendered by him, the said Joseph Ralph Burton, Senator, as aforesaid, to the said Rialto Grain and Securities Company (a corporation duly organized under the laws of the State of Missouri) before the Post Office Department of the United States, in a certain matter then and there pending before said Post Office Department, in which the said United States was directly interested, that is to say: whether the said Rialto Grain and Securities Company had violated the provisions of Section 5480 of the Revised Statutes of the United States, in that it (said Company) had through its officers, agents and servants devised a
22 scheme and artifice to defraud, which was to be effected by said Rialto Grain and Securities Company, through and by its officers, agents and servants, in opening correspondence and communication with divers persons resident within the United States, by means of the Post Office establishment of the United States, and whether said Rialto Grain and Securities Company, by its said officers, agents and servants, in and for executing said scheme and artifice to defraud, and placed or deposited any letter or packet in any post office of the United States, to the end and for the purpose of enabling the Postmaster General of the United States, in pursuance of the authority vested in him by law, to ascertain, find and determine from evidence satisfactory to him, the said Postmaster General, whether he, the said Postmaster General should order and direct the Postmaster at St. Louis, Missouri, not to deliver to the said Rialto Grain and Securities Company, but to return with the word "Fraudulent" Plainly written or stamped upon the outside (as authorized by Section 3929 and Section 4041 of the Revised Statutes of the United States, as amended by the Act of Congress of March 2nd., 1895) any and all letters addressed to said Rialto Grain and Securities Company, and sent to or through the Post Office at St. Louis, Missouri, by means of the Post Office establishment of the United States.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further present; that the services so as aforesaid rendered to the said Rialto Grain and Securities Company, by the said Joseph Ralph Burton, Senator, as aforesaid, consisted in part of visits to the said Postmaster General, the Chief Post Office Inspector, and other officers of the Post Office Department of the United States, and of representations and statements made to the said Postmaster General, the said Chief Post Office Inspector, and, said other officers, which said visits, representations and statements so as aforesaid made by the said
23 Joseph Ralph Burton, were made with the view and for the purpose of inducing said Postmaster General, the said Chief Post Office Inspector, and said other officers, to decide

the question so as aforesaid pending before said Post Office Department, in a manner favorable to the said Rialto Grain and Securities Company, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

Ninth Count. And the Grand Jurors aforesaid, on their oaths aforesaid, do further present: that Joseph Ralph Burton was at all of the times and dates hereinafter mentioned, and now is a member of the Congress of the United States of America, to-wit: a Senator from the State of Kansas, duly elected and chosen by the Legislature of said State of Kansas for a term of six years, expiring on the 4th day of March, A. D., 1907, and was at all of said times duly qualified, admitted and acting as such Senator.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further present; that on the 16th day of February, A. D., 1903, at the City of St. Louis, in the State of Missouri, and within said Division and District aforesaid, and within the jurisdiction of the Court aforesaid, the said Joseph Ralph Burton, Senator, as aforesaid, did unlawfully, knowingly, willfully and corruptly, take, accept and receive a certain check for the payment of money, for the sum of five hundred dollars, which said check bore date February 16th, 1903, and was made and drawn by the Rialto Grain and Securities Company, by W. D. Mahaney, Vice President, upon the Commonwealth Trust Company of St. Louis, payable to the order of the said Joseph Ralph Burton, by the name of J. R. Burton, and by the said Joseph Ralph Burton, by the name of J. R. Burton, duly endorsed, and then and there by the said Commonwealth Trust Company paid in lawful money of the United States to the said Joseph Ralph Burton, as compensation for the services of him, the said Joseph
24 Ralph Burton, Senator as aforesaid, theretofore, to-wit: on the 22nd day of November, A. D., 1902, and on divers other days between said last mentioned date and the said 26th day of March, A. D., 1903, rendered by him, the said Joseph Ralph Burton, Senator, as aforesaid, to the said Rialto Grain and Securities Company (a corporation duly organized under the laws of the State of Missouri) before the Post Office Department of the United States in a certain matter then and there pending before said Post Office Department, in which the said United States was directly interested, that is to say: whether the said Rialto Grain and Securities Company had violated the provisions of Section 5480 of the Revised Statutes of the United States, in that it (said Company) had through its officers, agents and

servants devised a scheme and artifice to defraud, which was to be effected by said Rialto Grain and Securities Company, through and by its officers, agents and servants, in opening correspondence and communication with divers persons resident within the United States, by means of the Post Office establishment of the United States, and whether said Rialto Grain and Securities Company, by its said officers, agents and servants, in and for executing said scheme and artifice to defraud, had placed or deposited any letter or packet in any post office of the United States, to the end and for the purpose of enabling the Postmaster General of the United States, in pursuance of the authority vested in him by law, to ascertain, find and determine from evidence satisfactory to him, the said postmaster General, whether he, the said Postmaster General, should order and direct the Postmaster at St. Louis, Missouri, not to deliver to the said Rialto Grain and Securities Company, but to return with the word "Fraudulent" plainly written or stamped upon the outside (as authorized by Section 3929 and Section 4041 of the Revised Statutes of the United States, as amended by the Act of Congress of March 2nd, 1895), any and all letters
25 addressed to said Rialto Grain and Securities Company, and sent to or through the Post Office at St. Louis, Missouri, by means of the Post Office establishment of the United States.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further present: that the services so as aforesaid rendered to the said Rialto Grain and Securities Company, by the said Joseph Ralph Burton, Senator, as aforesaid, consisted in part of visits to the said Postmaster General, the Chief Post Office Inspector, and other officers of the Post Office Department of the United States, and of representations and statements made to the said Postmaster General, the said Chief Post Office Inspector, and said other officers, which said visits, representations and statements so as aforesaid made by the said Joseph Ralph Burton, were made with the view and for the purpose of inducing said Postmaster General, the said Chief Post Office Inspector, and said other officers, to decide the question so as aforesaid pending before said Post Office Department, in a manner favorable to the said Rialto Grain and Securities Company, contrary to the form of the statute in such case made and provided against the peace and dignity of the United States.

DAVID P. DYER,
United States Attorney.

Indorsed: No. 4992. United States District Court, Eastern Division, Eastern District of Missouri. The United States vs. Joseph Ralph Burton. Indictment for Violation of Sec. 1782

R. S. U. S. A true bill, Edw. L. Preetorius, Foreman Grand Jury. Filed January 23rd, 1904. James R. Gray, Clerk.

And afterwards, at said November Term, 1903, of said
27 Court, the following proceedings were had and appear of record in said cause, to-wit:

Wednesday, January 27th, 1904.

The United States, Plaintiff,
4992. vs.
Joseph Ralph Burton, Defendant.

Indictment for Violation of Section 1782 of the Revised Statutes of the United States.

This day comes the United States by District Attorney and the said defendant being present in Court in person and also appearing by Chester H. Krum, Esquire, his attorney, and on Motion of the District Attorney, it is Ordered that he the said defendant be arraigned upon the Indictment herein against him and thereupon the said defendant waives the reading of the said Indictment and formal arraignment thereon and pleads Not guilty to the charges as contained in the said Indictment.

And on the application of the said defendant, It is Ordered that he be allowed to give bail for his appearance herein, the amount of such bail being fixed by the Court at the sum of ($5000.00) Five Thousand dollars.

And thereupon the said Joseph Ralph Burton as principal and Ernest H. Kastor, George W. Davis, and Herbert A. Vrooman, as Sureties personally appeared in open Court and acknowledged themselves to owe and be indebted to the United States of America in the sum of ($5000.00) Five thousand dollars to be levied of their respective goods and chattels, lands and tenements, and to the said United States of America rendered; conditioned however to be void if the said defendant Joseph Ralph Burton shall personally appear at and before this Court on the Seventh day of March, next, A. D., 1904, then and there to answer to the charges as contained in the said
28 Indictment herein against him, and if he shall appear from day to day thereafter, and from time to time, or at any time, at any future term, or day of the term of this Court, as may be Ordered by said Court until discharged upon the said Indictment and further, if he, the said defendant shall then and there obey any and all Orders which may be made by said Court in relation to said Indictment during the pending of the same, and not depart from said Court without leave thereof.

Tuesday, February 9th, 1904.

The United States, Plaintiff,
4992. vs.
Joseph Ralph Burton, Defendant.

Indictment for Violation of Section 1782 of the Revised Statutes of the United States.

This day comes the United States by District Attorney and On Motion of the said Attorney, It is Ordered that the said defendant appear at and before this Court on Tuesday, March 22nd, instead of Monday, March 7, 1904, as heretofore Ordered on January 27th, 1904, and that this cause be set for trial on Tuesday March 22nd, 1904.

Saturday, February 13th, 1904.

The United States, Plaintiff,
4992. vs.
Joseph Ralph Burton, Defendant.

Indictment for Violation of Section 1782 of the Revised Statutes of the United States.

This day comes the United States, by District Attorney, and the said defendant being present in Court in compliance with the recognizance heretofore entered into by him in this cause and also appearing by Chester H. Krum and Fred W. Lehman, Esquire, his attorneys, the said defendant withdraws as of February 11th, (1904) nunc protunc his plea of Not guilty theretofore entered by him in this cause on January 27th last (1904)

And the demurrer filed in this cause on February 11th, last (1904) having been taken up the same is thereupon
29 argued by counsel and submitted to the Court and the Court not being fully advised of and concerning the same, takes further time within which to consider of its judgment thereon.

The said demurrer filed as aforesaid is in the words and figures as follows, to-wit:

In the District Court of the United States, Eastern Division, Eastern District of Missouri.

United States
vs.
Joseph Ralph Burton.

Demurrer to Indictment.

The defendant demurs to the indictment and each and every count thereof and says that neither of said counts is sufficient in law to require him to answer thereto and as grounds of said

demurrer, the defendant says, that neither count states facts showing that at any time, there was a matter or thing in which the United States was directly or indirectly interested, pending in the Post Office Department; that whether an order to stamp mail fraudulent shall be made is not a matter in which the United States is interested; that the Postmaster General had no authority to make an order upon the facts stated and had no jurisdiction in the premises; that the interest of the United States is a matter pending before a Department which renders the statute operative is either a pecuniary, or property interest, which may be favorably or unfavorably affected by action sought or taken in the given matter pending before the Department; that the matter or thing covered by the statute is one of controversy, claim, or asserted right as against the United States, or in its behalf by whose result the property, or pecuniary interests of the United States may be affected.

Wherefore defendant prays judgment, etc.

CHESTER H. KRUM,
BOYLE, PRIEST & LEHMAN,
For Defendant.

And afterwards the following further proceedings were had and appear of record in said cause, to-wit:

29a Tuesday, February 16th, 1904.

The United States, Plaintiff,
4992. vs.
Joseph Ralph Burton, Defendant.

Indictment for Violation of Section 1782 of the Revised Statutes of the United States

This day comes the United States by District Attorney and the said defendant being present in Court in compliance with the recognizance heretofore entered into by him in this cause and also appearing by Chester H. Krum, and Fred W. Lehman, Esquires, his attorneys, and the Court having considered the questions of law arising upon the said demurrer, and being fully advised of and concerning the same, is of opinion that the law on said demurrer is for the said plaintiff and in accordance with such opinion Now Orders that the said demurrer be, and the same is hereby overruled.

Tuesday, March 22nd, 1904.

The United States, Plaintiff,
4992. vs.
Joseph Ralph Burton, Defendant.

Indictment for Violation of Section 1782 of the Revised Statutes of the United States.

This day comes the United States, by District Attorney, and the said defendant being present in court in compliance with the recognizance heretofore entered into by him in this cause and also appearing by Chester H. Krum and Fred W. Lehman, Esquires, his attorneys, and the said District Attorney says that he will Not further prosecute the said defendant upon the fourth (4th) and fifth (5th) counts of the Indictment herein against him, and asks that the said Indictment as to said Fourth (4th) and fifth (5th) counts be now dismissed.

It is therefore, Now considered by the Court, that
30 the Indictment in this cause, so far as the same relates to the fourth (4th) and fifth (5th) counts therein contained, be, and the same is hereby now dismissed, and that the said defendant, Joseph Ralph Burton, be released and discharged from further prosecution upon the said (4th) fourth and (5th) fifth counts of said Indictment and that as to said counts he go hence without day & C.

And thereupon the said defendant waives the reading of the said Indictment and formal arraignment thereon and pleads Not guilty to the charges as contained in the said Indictment.

And this cause being regularly called for trial and both parties being ready for trial, a Stipulation of parties as to certain facts is filed. And on Motion of the District Attorney It is Ordered that a jury come and thereupon come said jury, to-wit: E. F. Rippstein, E. S. Purdy, James Bowers, A. E. Dann, M. F. Brown, A. E. Ford, A. P. Behrens, Charles F. Bates, Charles W. Wall, Albert B. Groves, William H. Steele, and Edward B. Lansing, twelve good and lawful men who were duly sworn well and truly to try and true deliverance make between the United States and the said defendant upon the Indictment herein, and thereupon the testimony of witnesses is in part heard but the hearing not being concluded at the hour of adjournment, It is Ordered that the further hearing thereof, and further proceedings herein be continued until to-morrow morning.

Ordered That the Marshal furnish Meals and Lodging for the jury during the trial of this cause and that said jury be not allowed to separate during said trial and that said Meals and Lodging be furnished at the cost of the United States.

Wednesday, March 23rd, 1904.

The United States, Plaintiff,
4992. vs.
Joseph Ralph Burton, Defendant.

Indictment for Violation of Section 1782 of the Revised Statutes of the United States.

This day comes the United States, By District Attor-
31 ney and the said defendant being present in Court in compliance with the recognizance heretofore entered into by him in this cause and also appearing by Chester H. Krum and Fred W. Lehman, Esquires, his attorneys and the jury sworn in this cause being also present, and the trial of this cause having been resumed, the testimony of witnesses is further heard but the hearing not being concluded at the hour of adjournment, It is Ordered that the further hearing thereof, and further proceedings herein be continued until to-morrow morning.

Thursday, March 24th, 1904.

The United States, Plaintiff,
4992. vs.
Joseph Ralph Burton, Defendant.

Indictment for Violation of Section 1782 of the Revised Statutes of the United States.

This day comes again the United States by District Attorney, and the said defendant being present in Court in compliance with the recognizance heretofore entered into by him in this cause and also appearing by Chester H. Krum, and Fred W. Lehman, Esquires, his attorneys and the jury sworn in this cause being also present, and the trial of this cause having been again resumed the testimony of witness is further heard but the hearing not being concluded at the hour of adjournment, It is Ordered that the further hearing thereof and further proceedings herein be continued until to-morrow morning.

Friday, March 25th, 1904.

The United States, Plaintiff,
4992. vs.
Joseph Ralph Burton, Defendant.

Indictment for Violation of Section 1782 of the Revised Statutes of the United States.

This day comes again the United States by District Attorney, and the said defendant being present in Court in compliance

with the recognizance heretofore entered into by him in this cause, and also appearing by Chester H. Krum and Fred
32 W. Lehman, Esquires, his attorneys and the jury sworn in this cause being also present, and the trial of this cause having been again resumed the testimony of witnesses is further heard but the hearing not being concluded at the hour of adjournment, It is Ordered that the further hearing thereof and further proceedings herein be continued until to-morrow morning.

Saturday, March 26th, 1904.

The United States, Plaintiff,
4992. vs.
Joseph Ralph Burton, Defendant.

Indictment for Violation of Section 1782 of the Revised Statutes of the United States.

This day comes again the United States by District Attorney, and the said defendant being present in Court in compliance with the recognizance heretofore entered into by him in this cause and also appearing by Chester H. Krum and Fred W. Lehman, Esquires, his attorneys, and the jury sworn in this cause being also present and the trial of this cause having been again resumed, the testimony of witnesses is further heard and said testimony being concluded, the said jury after hearing the arguments of Counsel and after receiving instructions from the Court, retire to consider of the Verdict to be rendered herein.

Monday, March 28th, 1904.

The United States, Plaintiff,
4992. vs.
Joseph Ralph Burton, Defendant.

Indictment for Violation of Section 1782 of the Revised Statutes of the United States.

This day comes the United States, by District Attorney, and the said defendant being present in Court in compliance with the recognizance heretofore entered into by him in this cause and also appearing by Chester H. Krum and Fred W. Lehman, Esquires, his attorneys, and the jury sworn in this cause return into Court the following Verdict, to-wit:

33 "We the jury in the above entitled cause find the defendant guilty as charged in Counts One (1) two (2) Six (6) Seven (7) Eight (8) and Nine (9) of the Indictment, and Not guilty as charged in Count three (3) C. W. Wall, Foreman."

And thereupon the said defendant by his said attorneys files his Motion for a New trial of this cause, and it is Ordered that the said defendant appear at and before this Court on to-morrow at ten o'clock in the forenoon and from day to day thereafter in obedience to the recognizance heretofore entered into by him in this cause.

Tuesday, March 29th, 1904.

The United States, Plaintiff,
4992. vs.
Joseph Ralph Burton, Defendant.

Indictment for Violation of Section 1782 of the Revised Statutes of the United States.

This day comes the defendant, by Chester H. Krum and Fred W. Lehman, Esquires, his attorneys and files his motion in arrest of judgment in this cause.

Wednesday, April 6th, 1904.

The United States, Plaintiff,
4992. vs.
Joseph Ralph Burton, Defendant.

Indictment for Violation of Section 1782 of the Revised Statutes of the United States.

This day comes the United States by District Attorney and the said defendant being present in Court in compliance with the recognizance heretofore entered into by him in this cause and also appearing by Chester H. Krum, Esquire his attorney, the Motion for a New Trial and the Motion in arrest of Judgment heretofore filed by the defendant in this cause having been taken up the same are argued by Counsel and submitted to the court and the court having considered said Motion and being fully advised of and concerning the same It is Ordered that the said Motions be and the same are hereby Overruled.

And thereupon the said District Attorney asks the
34 judgment and sentence of the Court upon the Verdict of guilty heretofore returned by the jury to the charges as contained in the first, second, Sixth, Seventh, eighth, and Ninth counts of the Indictment herein and the said defendant having nothing further to say after demand made of him why such judgment and sentence should Not be so rendered:

It is therefore Now considered by the Court, and as the judgment and sentence of the Court upon the said Verdict of guilty so returned by the jury in this cause, that he, the said defendant, Joseph Ralph Burton, make his fine to the United States of America by the payment of the sum of ($2500.00)

Twenty-five hundred dollars and also the costs of the prosecution to be taxed and that he, the said defendant be confined and imprisoned in the Iron County Jail at Ironton, State of Missouri, for and during the term of (6) Six Months.

And the Marshal of the United States, in and for the said Eastern District of Missouri, is hereby directed to deliver the said prisoner, together with a duly certified copy of this Judgment and sentence to the Jailer of said Iron County Jail.

And thereupon the said defendant Joseph Ralph Burton by Chester H. Krum, Esquire, his attorney, tenders a bill of Exceptions which is allowed, signed, sealed and Ordered to be made a part of the record herein.

And the said defendant herein files his assignment of Errors and his Petition for a Writ of Error to the United States Circuit Court of Appeals Eighth Circuit, from the judgment and sentence rendered herein against him, which petition is granted and a citation, citing and admonishing the said plaintiff to be and appear at said Circuit Court of Appeals sixty days from this date is signed by the Judge.

35 And it is further Ordered that upon the said defendant Joseph Ralph Burton giving a bond in the penal sum of Ten Thousand dollars ($10,000.00) conditioned as required by law and with sureties to be approved by the Court, a supersedeas be awarded staying said judgment and sentence as to him and thereupon the said defendant Joseph Ralph Burton presents a bond in the said sum of Ten Thousand dollars ($10,000.00) with Ernest H. Kastor, George W. Davis, and Herbert A. Vrooman as sureties which bond is approved by the Court and Ordered filed.

Which said Bill of Exceptions, assignment of Errors, petition for a writ of error and bond are respectively in words and figures as follows, to-wit:

36 Bill of Exceptions.

In the United States District Court in and for the Eastern Division of the Eastern District of Missouri.

State of Missouri,
City of St. Louis—ss.

The United States of America,
vs.
Joseph Ralph Burton.

Be it Remembered, That upon the trial of this cause during the March Term, 1904, of the District Court of the United States for the Eastern Division of the Eastern Judicial District of Mis-

souri, upon the 22nd, 23rd, 24th, 26th, 27th, and 28th days of March, A. D., 1904 before the Honorable Elmer B. Adams, Judge of said District Court of the United States, and a jury, the following further proceedings were had and evidence introduced.

The United States was represented in the trial of said cause by Col. D. P. Dyer, United States District Attorney, and Messrs Bert D. Nortoni and Horace Dyer, assistant United States District Attorneys; the Defendant, Joseph Ralph Burton, being represented by Messrs. Chester H. Krum and F. W. Lehmann.

Judge Krum: The defendant asks for a larger number of jurors than are now called, for the purposes of peremptory challenges on the ground that while the offense is designated in the Statute as a misdemeanor, it is, nevertheless, an infamous offense under the rulings of the Supreme Court of the United States.

The Court: My judgment is that this is a misdemeanor, pure and simple, and that the challenges should be limited to
37 three on each side.

To which ruling of the court the defendant, by his counsel, then and there duly excepted.

Col. Dyer: Before the jury is sworn, I desire to enter a nolle prosequi as to the fourth and fifth counts of this Indictment.

The Court: That may be done.

The jury, having been empaneled and sworn, the government offered evidence as follows:

Col. D. P. Dyer, United States District Attorney, made the opening statement on behalf of the Government to the jury, to which Judge Chester M. Krum, counsel for defendant, replied.

Col. Dyer: We will offer formal proof that has been admitted—that is, a stipulation may be introduced in reference to the matter so as to avoid the introduction of other testimony.

Judge Krum: Perhaps it would be preferable, your honor, if the defendant would admit, as Col. Dyer and I have stipulated.

The Court: Take it as it comes along on the different phases of the evidence, and if it is admitted, you can so indicate.

Col. Dyer: It is admitted that the defendant, Joseph Ralph Burton, was at the times mentioned in indictment No. 4192, and is now, a member of the Congress of the United States of America, to wit: a Senator from the State of Kansas, duly elected and chosen by the Legislature of the State of Kansas for a term of six years expiring on the 4th day of March, 1907,

and was, at all of said times, duly qualified and admitted to act as such Senator.

38 Judge Krum: That is admitted.

Col. Dyer: The Government offers in evidence the articles of incorporation of the Rialto Grain and Securities Company.

Judge Krum: We will admit the incorporation of the Rialto Grain and Securities Company, but would like to have the articles of association read—I mean as to the purposes of the organization of the corporation.

Counsel for the United States here read the Articles of Incorporation of the Rialto Grain and Securities Company, the same being in words and figures as follows, to-wit:

39 State of Missouri.

Department of State.

To All to Whom These Presents Shall Come:

I, Samuel B. Cook, Secretary of State of the State of Missouri and Keeper of the Great Seal thereof, hereby certify that the annexed pages contain a full, true and complete copy of ..... Articles of Association of the Rialto Grain and Securities Company, filed Sept. 5th, 1902. .....
.....
.....
as the same appears on file ..... in this office.
[Seal]

In Testimony Whereof, I hereunto set my hand and affix the Great Seal of the State of Missouri.

Done at the City of Jefferson, this 9th day of March, A. D., 1904.

SAMUEL B. COOK,
Secretary of State.

St. Louis, Mo., Sept. 2, 1902.

Know All Men By These Presents:

That we, whose names are hereunto subscribed, do hereby associate ourselves together for the purpose of forming a corporation under the provisions of the laws of the State of Missouri, Chapter XII, Article IX, Revised Statutes of 1899, and for that purpose state:

First: The name of the corporation shall be Rialto Grain and Securities Company.

Second: The principal office of this corporation shall be located in the City of St. Louis and State of Missouri.

40 Third: The capital stock of this corporation is Twenty-five Thousand Dollars (25000.00), divided into two hundred and fifty (250) shares of the par value of One Hundred Dollars ($100.00) each; the same has been bona fide subscribed and is full paid up in lawful money of the United States and is in the custody of the persons herein after named as the first Board of Directors.

Fourth: The names and places of residence of the several shareholders and the number of shares subscribed by each are as follows:

Names.	Residence.	No. of shares.
Joseph S. Lightholder,	St. Louis, Missouri,	200
H. D. Nisbet,	St. Louis, Missouri,	1
Lawrence Talley,	St. Louis, Missouri,	47
C. A. Smith,	St. Louis, Missouri,	1
Frank A. C. MacMannus,	St. Louis, Missouri,	1

Fifth: The business of this corporation shall be managed by a Board of Directors composed of five (5) directors, and the following named shareholders shall constitute the Board of Directors of this corporation for the first year: Joseph S. Lightholder, H. D. Nisbet, Lawrence Talley, C. A. Smith, Frank A. C. McManus.

Sixth: This corporation shall continue as a body corporate for the term of fifty (50) years.

Seventh: The purposes for which this corporation is formed are to buy, sell and deal in all kinds of grain, seeds, cereals, provisions, cotton and bonds and securities of all kinds except stocks of other corporations on its own account or acting as agents for others, to do a general brokerage business, to own real estate, and to buy, sell and deal in same on its own account or for others, to build, lease, own operate and
41 control elevators and warehouses in the State of Missouri or elsewhere, to do a general merchandise business and to do generally whatever may be necessary to carry on its business.

Eighth: The first meeting of the stockholders of this corporation for the purpose of adopting by-laws and for the transaction of any other business which may be brought before them will be held at the office of the company in the City of St. Louis on the 5th day of September, 1902, at nine o'clock a. m.

In Witness of all of which the said parties have hereto set their hands and hereunto affixed their seals this 2nd day of September, A. D., 1902.

JOSEPH S. LIGHTHOLDER, [Seal]
H. D. NISBET, [Seal]
LAWRENCE TALLY, [Seal]
FRANK A. C. MACMANUS, [Seal]
C. A. SMITH, [Seal]

State of Missouri,
City of St. Louis—ss.

On this 2nd day of September, 1902, before me personally appeared Joseph S. Lightholder, H. D. Nisbett, Lawrence Tally, C. A. Smith and Frank A. C. MacManus, to me known to be the persons described in and who executed the foregoing instrument and acknowledged that they severally executed the same as their free act and deed.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal at my office in the City of St. Louis, Missouri, the day and year above written.

Copy of Seal.
William McNamee,
Notary Public
City of St. Louis, Mo.

WM. McNAMEE,
Notary Public.

My term expires July 23rd, 1903.

42 Filed and recorded September 4th, 1902, at 10:47 A. M.
WM. H. HAHN, Recorder.

State of Missouri,
City of St. Louis—ss.

I, the undersigned Recorder of Deeds for said City and State, do hereby certify the foregoing to be a true copy of the articles of incorporation of the Rialto Grain and Securities Company, together with the acknowledgement and date of filing and recording thereof, as the same remains of record in my office in Book of Corporations No. 19, page 543.

In Witness Whereof, I have hereunto set my hand and official seal this 4th day of September, A. D., 1902

[Seal] WM. H. HAHN, Recorder.

Filed and certificate of incorporation issued Sep. 5, 1902.
SAM B. COOK,
Secretary of State.

Col. Dyer: The law upon the subject and the Statute—of course the court will take judicial notice of that, but in that connection I would like to offer in evidence and read the rules

and regulations of the Post Office Department, and also the regulations authorizing the Post Master General to appoint inspectors.

Counsel for the United States here read Sections 34, 42, 43, 44 and 45, as found on pages 42, 43, 45, 46, and 47 of the Postal Laws and Regulations, the same being in words and figures as follows, to-wit:

43 Sec. 34. (The Postmaster-General may appoint) fifteen (post-office) inspectors in charge of divisions at (sal-ry of) two thousand five hundred dollars per annum (each) without per diem, fifteen inspectors at two thousand two hundred and fifty dollars per annum (each) without per diem; and fifteen inspectors at two thousand dollars per annum (each) without per diem.

Note. * * * * *

Sec. 43. Post-office inspectors are under the direction of the Fourth Assistant Postmaster-General, and subject to the immediate control of the Chief Post-Office Inspector (see Sec. 20), who is charged with the assignment to duty and general direction of the force and the supervision of all matters pertaining to this branch of the service.

2. The service is organized into sixteen divisions each in charge of an inspector in charge, who will direct the work of the inspectors assigned to his division. All communications must be addressed and sent to the inspector in charge, and through him all orders will be given, unless, to save time in special cases, they are communicated directly from the Department by the Postmaster-General, Fourth Assistant Postmaster-General, or Chief Inspector, in which event the inspector in charge will be notified.

3. The headquarters of the several Divisions of the post-office inspectors are as follows:

* * * * *

g. For the division embracing the States of Missouri (except the city of Kansas City), Iowa, and Arkansas: St. Louis, Mo.

Sec. 44. Post-office inspectors are the special representatives of the Post-master General. They are charged with the investigation of post-offices and all matters connected with the postal service, and with keeping the Department ad-
44 vised as to the condition and needs of the service. Alleged violations of law are to be investigated and reported upon by them, and they will, when necessary, aid in the prosecution of all criminal offenses.

2. Post-masters, clerks, employees, contractors, and others connected with the postal service are subordinate to post-office inspectors with acting within the scope of their duty and employment. But no arbitrary power is hereby conferred upon them. They are not to interfere with any officer or employee who is in the proper discharge of his duty further than to examine his methods, system and accounts, or any complaints which may be made against him. Nor are they to interfere with the mails or the transportation thereof, except as expressly authorized by law, and as permitted by the regulations.

3. Inspectors are intrusted with keys to the several mail locks in use, and are empowered to open and examine mails whenever and wherever they may find it necessary. They are authorized to enter and inspect post-offices at all times and to make such other inquiries and investigations as the interest of the service may demand.

4. Commissions are issued by the Postmaster-General to all inspectors, and they are required to exhibit them as evidence of their authority.

Sec. 45. Special regulations for the instruction and government of inspectors are prescribed in the book of instructions, which is confidentially furnished to each inspector. Obedience and conformity to these regulations and the strict preservation of their secrecy are enjoined.

Col. Dyer: Later on where authority is given to the Post Master General to issue other instructions which are given officially to the Post Office inspectors, I shall have to
45 ask for them and examine the inspectors. I do not think they are covered by the stipulation.

Mrs. Bella Evans a witness of lawful age, being duly produced, sworn and examined on the part of the United States, testified as follows:

Direct Examination

By Col. D. P. Dyer:

Q. Will you state to the jury, if you please, madam, your name in full? A. Mrs. Bella Evans.

Q. Where do you reside? A. Albany.

Q. New York? A. New York.

Q. How long have you lived in Albany? A. Fourteen years.

Q. I show you a letter dated Albany, N. Y., October 28th, 1902, and ask you to state to the Jury whether you wrote that letter? A. I did.

Q. And was that letter mailed by you? A. It certainly was.

Q. Do you know Mrs. K. C. Hout? A. Yes, sir.
Q. Where does she reside? A. At present?
Q. Does she reside in the city of Albany also? A. Yes, sir.
Q. At the time the letter I have shown you was written, on October 28, 1902, did Mrs. Hout and yourself live at the same place? A. Yes sir.
Q. Do you know her writing? A. Yes sir.
Q. Look at this letter I now show you, which is dated Albany, New York, October 30, 1902, and state whether this is in the handwriting of Mrs. Hout? A. (After examining letter): Yes sir.

Col. Dyer: I offer in evidence the letters dated October 28th, 1902, and October 30, 1902.

46 Judge Krum: I object to the letters, first, because they are not competent, even as filed in the Post Office Department, as creating a matter or thing in which the United States was interested directly or indirectly; secondly, that the letters are immaterial, because the only fact open to consideration upon the theory of the Government is the filing of them in the Department. What the letters themselves were or are is not material to any issue in this case.

The Court: Are these the letters which are the foundation, as you claim, Mr. District Attorney, of the investigation that was afterwards conducted by the Postal Department?
Col. Dyer: They are.
The Court: You will show they were afterwards filed?
Mr. Dyer: I will show as I go along that they were received by the Post Master General, and afterwards referred to the inspector in charge, who afterwards referred them to Chief Inspector Dice of this city. I cannot prove but one thing at a time.

Objection overruled. To which ruling of the Court, defendant, by counsel, then and there duly excepted.

The Court: Of course it will be understood now that the truth of the statements in the letters may be entirely immaterial. The only question is whether the letters present something that would be matter of investigation, and therefore it may become necessary and proper to read the letters. But the truthfulness of the letters, as to whether they state the truth or not, is immaterial. The only material thing is whether they present the subject for investigation.

Counsel for the Government here read the letters in evidence, the same being in words and figures as follows, to-wit:

47 (Stamped) P. O. Department.
Div. of P. O. I. & M. D.
Distributing Desk
Nov 3 1902
Received
Washington, D. C.

856 Third St., Albany, N. Y.

Postmaster General,
Washington, D. C.

Dear Sir: I wish to draw your attention to a matter which seems to me to come under your jourisdiction.

On Oct. 16th I mailed to the Rialto Grain & Security Co., Rialto Bld., Mo., a New York draft on the Albany Co., Bank of $30. thirty dollars for investment. They have failed to notify me of receipt of draft and I have written them letters which they refuse to answer. Will you kindly trace the same and oblige

BELLA EVANS.

Oct. 28th, 1902. 856 Third St., Albany, N. Y.

(Stamped) P. O. Department
Div. of P. O. I. & M. D.
Distributing Desk
Nov 1 1902
Received
Washington, D. C.

Albany, N. Y., 856 Third St.

48 Postmaster General,
Washington, D. C.

Respected Sir: Through our local P. M. I have made formal complaint of the Rialto Grain & Security Co., of St. Louis, Mo. One of your inspectors was in the Albany office at the time and through an employee of the office advised me to write you stating the case. The parties named have swindled me in the sum of $50 sent them. They made false quotations and utterly ignored my instructions and my demands for the return of my money. They utterly refused to answer my letters. They sent a slip of paper inclosed in one of their letters stating that if I returned same with remittance they would guarantee me six hundred per cent within 10 days on Dec. corn. I sent $50 only to be swindled. I have a son in the 8th Cav. Troop L. U. S. A.

whom I wanted to visit and hoped thus to gain the means to do so. Will you kindly have the P. M. at St. Louis investigate. I will go before a magistrate and make oath to my statements if necessary.

Yours very Respct.,

MRS. K. C. HONT.

Arthur M. Allen, a witness of lawful age, produced, sworn and examined on the part of the Government, testified as follows:

Direct Examination

By Mr. D. P. Dyer.

Q. State your name? A. Arthur M. Allen.

Q. How old a man are you? A. Sixty-two.

Q. Where do you live? A. Staten Island, New Brighton.

Q. State of New York? A. State of New York.

Q. I show you a letter, date New Brighton, Staten Island, and ask you to look at it and see whether you wrote that
49 letter to the Post Master General, and mailed it. A. (After examining letter): Yes sir.

Q. I will get you to state whether this paper and this booklet (indicating) or whatever it is, was enclosed in your letter to the Post Master General? A. Yes sir.

Q. I don't see any date upon this letter except the date of its receipt in the Post Office Department, which is December 30, 1902. Have you any independent recollection of the date of that letter? A. No, sir.

Q. You don't know the date of the letter? A. It was about 1902, at the end.

Q. But you have no independent recollection of the exact date? A. No sir.

Q. This letter, with these papers attached, as I understand you, was sent by you to the Post Master General at Washington? A. Yes, sir.

Col. Dyer: I offer this letter, with the attachment, in evidence.

Judge Krum: I object to this letter, the letter of the Rialto Grain and Securities Company which accompanies it, and this booklet, which seems to be torn in half, on the same ground as stated in the objection to the introduction of other letters.

Also on the ground that there is no specification in any count of the indictment that any such thing as this constituted any part of the foundation of an inquiry set on foot, as your Honor has held that this indictment alleges, by the Post Master General; and also, that this letter, as appears from its contents, is not a matter of complaint at all, but is simply a vehicle for

transmitting the letter of the Rialto Grain and Securities Company to the Post Office department. Your Honor will
50 see from the thing itself.

The Court: You claim, Mr. District Attorney, that this also represented a matter which was before the department and the subject matter of inquiry, as charged by the indictment?

Col. Dyer: Yes, and became a part of the same papers under the same number.

Objection overruled: to which ruling of the Court the defendant, by his counsel, then and there duly excepted.

The Court: You will show that it afterward became a part of the same case?

Col. Dyer: I will, and that it was given the same number as the others.

Counsel for the United States here read the letters referred to, which were in words and figures as follows, to-wit:

P. O. Department
Div. of P. O. I. & M. D.
Distributing Desk
Dec. 30, 1902.
Received
Washington, D. C.

New Brighton, Staten Island.

Plstmaster General:

Dear Sir: When the enclosed circular and book came to my address, my first impulse was to destroy them, but it occurred to me that they might be liable for using the mails for evil purposes, so they are herewith enclosed.

ARTHUR M. ALLEN.

(Stamped on the back):

51

P. O. Department
Received
Dec. 29, 1902.
Office of the Chief Clerk.

Hugh C. Dennis, President.	W. D. Mahaney, Secretary.	John H. Hundley, Gen'l. Manager.
Pres't Dennis Underwriting Agency.	George F. Munsa, Treasurer.	Taylor & Harlan, Counsel.
Wm. M. Leftwich, Vice-President.	F. B. Weeks, Cashier.	

Rialto Grain and Securities Company.
Incorporated
Grain, Cotton, Bonds and Provisions.

Special References:
The Tilden Company, St. Louis.
Kastor & Sons Company, St. Louis.
Skinner & Kennedy Company, St. Louis.
The Barr & Widen Mercantile Agency Company, St. Louis.
Bankers:
Fourth National Bank.
Commercial Trust Company.
Germania Trust Co.

Telephones:
Kinlock, A 1747
Bell, Main 3074

Orders executed on Margins
Private Wires.

Suites 202, 208, and 214 to 224 Rialto Building.

St. Louis, Mo., October 22, 1902.

A. M. Allen,
New York, N. Y.

Dear Sir:—

We take pleasure in providing you with the booklet enclosed. One hour of your time given to it, if you will follow the suggestions contained therein and make an investment in December Corn, may prove the old adage that "time is money" to your entire satisfaction.

We have made enormous profits for our customers within the past six months in corn deals. We expect to meet with even greater success in December corn. We would like you to be one of our early investors. Buy now, while the price is extremely low, and your profits will be all the greater.

Why Buy December Corn

Because: December corn today is selling around 52 cents; while, under existing conditions, with Armour absolutely in control, we believe it will sell at 75 cents or higher before the first of the year.

Because: December corn today is from 6 to 7 cents under cash corn, while at the same time last year it was selling at a premium over October corn of 2-1/2 cents.

52 Because: December corn means Old corn, and the stocks of Old corn in this country have not in twenty years been as low as at the present time. There is not even enough old corn left to supply the manufacturing industries in this country alone for sixty days. Do not overlook the astonishing fact that there is now being manufactured over sixty food products wholly from corn.

Because: The extreme lateness of the season all through the corn belt, together with damage to the growing crop from frost and continued rains absolutely prevents any new crop of corn grading before the end of December next. With con-

tinuance of bad weather these damage reports are daily growing worse, and from many sections are really alarming as to the extent of damage already irreparably done.

There are many other reasons why the purchase of corn for December delivery at this time should be put before you, but the above and those set forth in our booklet are, we believe, sufficient to prove our contention that a purchase at this time of corn for December delivery will return you enormous profits. Wire your order to buy December corn, and let your remittance follow by mail.

Very respectfully yours,
RIALTO GRAIN AND SECURITIES COMPANY,
Hugh C. Dennis,
President.

Counsel for the United States also offered in evidence the book enclosed with above letters, which was admitted in evidence and marked and is in words and figures as follows, to-wit:

How a Modest Fortune May Be Made From a Small Investment.

"Golden Gain from Golden Grain."

Introductory.

To those who are properly ambitious and desire to secure a fair proportion of the country's wealth by legitimate business methods, who will reason and think for themselves, this
53 little booklet is respectfully dedicated.

That speculation is legitimate needs no argument, as there is no line of business known which is not speculative, from the great Life Insurance Companies who speculate on the length of your life, to the little Grocer who buys a quantity of sugar or coffee, feeling that he can sell same at a profit. The world's great Markets, the Chicago Board of Trade, and the New York Stock and Cotton Exchanges have presented opportunities within the past year from which, on small beginnings, great fortunes have been made by judicious investment at the right time.

A careful persual of the following pages will convince you, we believe, that our views are logical and conservative, and that an envestment made along the lines we suggest, will produce for your tremendous profits within the next sixty days.

Respectfully,
RIALTO GRAIN & SECURITIES CO.
214 to 224 Rialto Building,
St. Louis, Mo.

RIALTO GRAIN & SECURITIES COMPANY

Incorporated

Grain, Cotton, Bonds and
Provisions
Orders Executed on Margins.
Private Wires.

Suites 202, 208 and 214 to 224 Rialto Building.
St. Louis.

54 Hygh C. Dennis, President,
President Dennis Underwriting Agency.
Wm. M. Leftwich, Vice-President,
W. D. Mahaney, Secretary,
George F. Munsa, Treasurer.

Bankers:

Fourth National Bank.
Commonwealth Trust Co.
Germania Trust Co.

Special References:

Kastor & Sons Company, St. Louis.
Skinner & Kennedy Company, St. Louis.
Any information you desire as to our financial standing will be furnished you by the
Barr & Widen Mercantile Agency Company,
whose address is
514-516 Commercial Bldg., St. Louis.

They have made a thorough investigation of our Company, and can give you an intelligent report, free of charge.

$5,850 In Two Months.

Can you make $5,850 in two months? If so, stop right here, for this torse tale is not meant for you. Otherwise—otherwise.

$5,850 is lot or a little money, it depends on how long and how hard you work for it. May be you are clever enough to save, say, $1.00 per day. If so, in sixteen years you will have $5,850.

Remember, it is not what you make but what you save out of what you make. Or may be you have a clean, comfortable business that nets you a solid, substantial sum, not in a two month but in a twelve month.

If so, you are worth about $97,000.

55 Unfortunately, some of us haven't the $97,000 profitably, or even unprofitably, invested, and others of us just don't want to wait sixteen long, saving, scraping, suffering years.

A Small Investment.

Let's invest $100 and see what happens, for you must invest to make money.

No one ever became even modestly rich simply working for someone else. You must use other people's hands—other people's brains.

Real estate would be a pretty good investment if you could get in on the ground floor on any active market, but $100 won't buy very many city lots or country plots, and $100 won't buy much of a stock for a store.

There is, however, a fruitful field where a reasonable amount of capital can be quickly turned over into positive profits if it is judiciously and intelligently invested.

We mean the purchase of any of the great staples in the commercial world whose values are constantly shifting, now increasing, now decreasing, depending upon the thousand and one governing conditions of each day, of each hour, of each minute.

Fortunes are made between dawn and dark by those who know and—act quickly. He who hesitates is lost.

Yes, it is speculation—but what business is not more or less speculation? Life insurance is a speculation on whether you die today, to-morrow or next year.

A clothier speculates in selling the fads and fancies of wearables. A new doctor takes chances—"patient" chances. The banker runs real risks on his loans. Every business enterprise contains an element of doubt—a business
56 chance.

Viewed in the light that nine out of every ten men who go into business fail, investments on the Chicago Board of Trade or the New York Stock and Produce Exchange are far from "wild" speculations.

Just Business Judgment.

Of course there are foolhardy speculations just as there are rash business ventures, but you take no unusual business chances if you use usual business judgment.

With $100 as a beginning, $5,000 or $50,000 profits can be made if you get in on the right thing—at the right time—with the right kind of brains behind it. There isn't any guess work or theory of supposition about this, just hard cold blooded facts—here they are:

"On June 15th, 1901, a client of the firm deposited with me, at my suggestion, one hundred dollars, to be invested in corn for September delivery. I purchased for his account 5,000 bushels at 43 1/2c per bushel, with a margin of 2c per bushel, and we sold his holdings at 47c, giving a profit of $175.00. This added to the principal gave $275.00. I purchased again at 47-1/2c per bushel, 10,000 on a 2c margin, investing $200.00,

leaving a balance on hand of $75.00. I resold at 50c, making a profit of $250.00, which added to the former amount made $525.00. On a decline from 50c to 49, I bought 25,000 bushels at the low figure, 49c, and resold at 54-3/4c, making a profit of $1,425.00. This made the capital then $1,950.00. The price of corn then broke back to 50c, and at that price I bought 50,000 bushels. This I sold at 57, which gave a profit of $3,500.00, which, added to the former capital, made the amount on hand $5,350.00. Realizing at that time that the drought was likely to be broken at any time and that the price
57 of corn would drop as soon as there were signs of rain I drew out of the market all of the above funds, with the exception of $500.00, with which I bought 1,000 bushels of corn at 56c. Corn continued to advance and I sold at 62c, making a total profit of $600.00. This added to the amount already on hand, gave $5,950.00, or a net profit of $5,850.00 in two months on an investment of $100.00."

CHARLES H. BROOKS.

Subscribed and sworn to before me this fifth day of December, 1901.

[Seal] GUILLEMINE E. TREADWAY,
My commission expires April 5, 1903. Notary Public.

"Under oath, I make the following statement, it being true to the best of my knowledge and belief. On the 23rd day of March I deposited $25.00, to be invested in corn and handled as the judgment of its officers might dictate. On that date there was bought for me 1,000 bushels of corn at 59c, protected with a margin of 2-1/2c a bushel, and afterwards sold on the 12th day of April at 61-1/2c, giving me a profit of $25.00, or a total credit of $50.00. On the same date they again bought for me 2,500 bushels of corn for July delivery at 61-3/8c, and again sold on April 14th at 62-7/8c, giving me a profit of 1-1/2c a bushel, or $37.50. On the same day they again bought for me 4,375 bushels of corn at 62-1/4c, protected with a margin of 2c a bushel, and on the 16th again sold at 63-1/4c, giving me a profit of $43.75, which added to my former credit gave me a total credit of $131.75. On the 16th they again bought for me 6,562 bushels at 63c, protected with a margin of 2c, a bushel, and sold on the 23rd at 66c, realizing a
58 profit of 3c a bushel, or a total of $196.86, which added to my former capital gave me a credit of $328.18, less $25.00 my original investment, leaving me a total net profit of $303.10 in twenty-eight days on an investment of $25.00."

Subscribed to this 13th day of April, 1902.

R. RAY BRYAN,
Deer, Mo.

Subscribed and sworn to before me this 23rd day of April, A. D. 1902. My term expires February 12th, 1903.

[Seal] JANE M. WHITELAW,
Notary Public.

You can't dodge these firm facts. The experience of these men is simply evidence of what we have done. And isn't it logical to conclude that what we have done for others we ought to be able to do for you, and do it in corn, too?

Why Corn?

We want to say in big black type, the very same thing can be done again in corn—done to-day.

For the next four months corn will offer more attractive speculative opportunities than any other commodity, bar none. We are so absolutely sure of this that we make these two prophecies.

First: Cash corn will not sell again for less than 40c per bushel, no matter how large the crop may be.

Second: Corn will sell for $1.00 by December 30.

Early last summer we became thoroughly convinced that an irresistible advance movement of corn was under way. We told the pulbic so. We [asservated] that prices would reach top figures before the new crop was harvested.

59 The correctness of our position has been unalterably demonstrated by the events of the past few weeks.

When the price was 35c we predicted a quick rise to 48c, that in June prices would be 70c, and in July, 1902, as high as 75c.

Were we right? If you know anything of the corn situation during the past eight months, you have already been convinced that we were.

Millions Made.

Millions in profits were taken at 90c, then the market eased off considerably in line with the policy of the forces behind the movement.

The uninitiated is liable to conclude that 1902 corn has passed into history and that there will be "nothing doing" during the remainder of this year.

This is an unmistakable error for at least two very good and sufficient reasons:

First: Present supply and demand.

Second: Pending manipulations.

Crop Conditions.

The average American corn crop aggregates over two billion bushels. This is more than 80 percent of all the corn produced in the entire world.

Until 1896 but 3 per cent of the United States corn crop was exported, and up until that time price range was from 20c to 25c per bushel—except as unusually short crops naturally elevated valuations.

In 1890 we exported thirty-one million bushels. Last year we exported two hundred and ten million bushels, an increase of 700 per cent in twelve years; yet, with all this magnifi-
60 cient gro-th, not more than 25 per cent of the corn crop is ever shipped in its natural state out of the location in which it is grown.

Corn Consumption.

It is universally conceded that America supplies the meats of the world. And it takes corn to fatten hogs and cattle, more of it every day. Ten years ago when man ate corn it was meal or hominy; to-day it is served up in dozens of different dainty, appetizing ways.

Corn is the basis of forty-seven food and one hundred and eight commercial products. The pure food movement which is sweeping the country from stem to stern offers numerous new and interesting ways of increasing the consumption of corn products.

Foreign Trade.

Abroad, much missionary work is done in the name of corn. The Continental peoples are overcoming their prejudices for the "cattle food", and are finding American maize a luxurious and indispensable article of daily diet.

In the Mississippi Valley an organization has been in active existence for promoting the use of corn as an article of food abroad. To-day, corn is king, not cotton.

Manufacturing Necessities.

The manufacture of glucose or "grape sugar" will illustrate the increased demand for corn. The glucose exported from this country in 1890 was worth $850.000; last year we sold to foreign nations an amount of this product worth $3,600,000. In the meantime our export of starch increased from $475,000 in 1890 to $2,640,000 last year.

61 From every highway and byway of the world comes a call for corn. Though prodigious is the annual output of our vast expanse of waiving, rolling fields, the insistent, persistent cry for still more corn is eating away the surplus margin at an alarming rate.

Alarming from an agricultural viewpoint, because the total area suitable for the profitable production of corn is almost totally utilized.

There can be no material enlargement of acreage, and of course the yield per acre depends entirely upon the season.

Thus, the crop is no greater than that of 1899; in fact, during the past twelve years the supply has been almost uniformly the same.

Stop a moment and weigh well what this means! Production is reaching the maximum, while consumption is just leaving the minimum.

In the last five years there has been an increased demand for corn of over four hundred million bushels, entirely apart from the demand for this cereal as an article of human food, and it is the human food feature that will hold public attention from now on.

Present Prospects.

With such future prospects let us turn to the immediate and present crop prospects.

Those who live in the grain belt and raise feed or corn and those who have investigated the corn markets and general grain situation, know that the drought of last summer which swept the heart of the corn district of the Central and Western States was the most blasting and devastating those sections ever experienced. Instead of just an average crop of over two billion bushels, the output was only one billion two hundred
62 million bushels; a shortage of a full billion bushels.

When two billion bushels are insufficient to supply the growing demand, what must be the actual condition with such a startling shortage?

Very little corn is carried over from one year to the next. Even in 1890 the crop was under average and a very small amount held until 1891.

The last Government report estimated the total amount of corn left in the hands of the farmers at five million bushels. Upon this utterly inadequate surplus must fall all the home and foreign demands until the new crop is harvested and marketed, which Will Not Be Until the First of December at the very earliest.

The manufacturing interests such as starch, glucose and food products need twice that amount and more.

Even the man who seldom thinks more than four times a minute can't fail to realize that those who must have corn will be compelled to pay for it just as all of us will be compelled to pay for hard coal this winter because of curtailment of production. And those who have corn to sell will simply reap a harvest.

Corn is bound to boom. It will reach higher prices than it ever has within the last twenty years, and during these two decades the $1.00 mark has been reached more than once or twice.

In 1892, with a crop amounting to one billion six hundred million bushels, or four hundred million bushels more than last years crop, corn reached $1.48 per bushel.

If now is not the time to buy corn when is it the time?

Manipulation Affects Prices.

63 These natural causes, sufficient in themselves to offer speculative opportunities of a life time, are simply the foundations for one of the biggest deals the produce world has ever known. Shrewd, successful operators keenly realize the true inwardness of the situation and have manipulated corn, taking profits at will. They are now prepared to put prices up at the opportune time.

In 1892 George H. Phillips, previously unknown to fortune and to fame, cornered corn with a capital of less than one hundred thousand dollars, and earned the sobriquet of "King Corn".

The members of the syndicate that to-day hold the corn situation in the hollow of their hands are the most successful speculators of Chicago, New York and St. Louis. Where Phillips had thousands they have millions.

The Recent "Bull".

During the first months of this year the syndicate sold large quantities for May delivery, and by [thoring] their holdings on the market at a propitious period succeeded in keeping prices far below figures justified by the real conditions.

This depressed May corn and had the ensuing effect on July and September deliveries.

Gates and his associates openly sold corn for May delivery but secretly purchased immense quantities for future deliveries. It has been reported from sources always credited as reliable, that the syndicate alone now holds more than fifteen million bushels for December delivery. In addition, these clever speculators have most of the cash corn of the country, which they secured on their July contracts. The result is, they have the market by the throat and when their plans are ripe, they can and simply will dictate their own prices.

64 The Natural "Bull" Season.

The syndicate is particularly fortunate in the period of their operation, for September, October and November and the natural "Bull" months of the year. Visible supplies and total supplies are always less at this period, consequently prices are more easily manipulated.

We have studied the situation from every point of view and are thoroughly convinced that in September, October and November, 1902, corn will make a new record.

It is an indisputable fact that there is far less corn and much more demand than at any corresponding period in the past twenty years.

Unless our calculations are all to the bad, there will be less than three million bushels of contract corn in December. Already ten times that amount has been sold for December delivery. That alone, without a single manipulation, would send prices skyward.

Don't Sell Now.

If you have corn, don't sell a single ear or a single bushel. Hold it until the last of October at the earliest. If you have a crib but not the corn, buy at once, do it to-day—don't delay. The autumn advances will come—and quickly.

Remember, contract corn will sell for $1.00 by December 31st. The new crop will have absolutely no effect or influence on the present situation, because the advance will be made before the leavening effect of the new yield can possibly be felt.

You can just cross the new crop right off the map as far as it concerns the present unusual opportunity of securing substantial returns from judicious and carefully managed speculations.

65 If you have any doubts about these facts, send us the doubts—we will remove them. Otherwise, send us your buying instructions at once.

Cash Future Corn.

Cash corn is now about 58c per bushel in Chicago. If you buy the grain outright, 5,000 bushels will cost you $2,400. $100 only will buy 170 bushels, and if you sell at 60c, you net the munificent profit of $3.40.

If you could do that every day in the year, which of course you can't do, it would only take you four and one-half years to get $5,850.

Just about as easy as saving it. Or suppose you bought 5,000 bushels outright and held it as we advise for December delivery, you would have the expense of three months storage, insurance and handling. There would also be the loss incidental to shipping and shrinkage. Add this to the interest on $2,400, the actual cost of the corn has been increased several cents per bushel.

It is unnecessary to purchase the actual corn when you can make a contract to buy a certain amount at a given time and at a specified price. This is thoroughly legitimate and a daily occurrence in regular business channels.

Retailers, manufacturers and jobbers purchase stocks and materials for future delivery at an agreed upon price.

If valuations increase, as they frequently do, the purchaser makes a profit without touching a single bale of goods, then he sells the stock and has delivery made to some one else, thereby making profits as a result of his foresight and business sagacity, and all the time he never had a single dollar actually tied up in merchandise.

Of course his credit and his commercial standing was
66 a protection to the parties agreeing to deliver. You can buy corn in exactly the same way.

Now, if it is perfectly legitimate to make such a deal in pig iron or flannels, why isn't it just as legitimate to make a similar speculation in corn? and if it is not, won't some good and kind person tell us why?

Suppose you build a house. The contractor undertakes delivery at a certain date for a certain sum. Perhaps, when the house is partially completed you sell it at quite an advance on the contract price. You turn your contract over to the third party and take your profits before the construction is completed—more speculation—no, that is just simply business.

When you buy corn futures you go through exactly the same motions as the merchant or the man who builds and sells a house. You contract for grain at a certain price. Valuations go up, so you sell your contract through the broker making the original trade. You make a profit.

While you owned the contract you protected it with a portion of the purchase price. This deposit is called a "Margin" and usually runs from 1c to 5c per bushel. 5,000 bushels then at a 2c margin requires a deposit of $100. That is your working capital, and unless the price should drop 2c per bushel no more would be necessary to carry on the negotiation.

When the proper time arrived, one week or three months as the case may be, you sell your contract just as you would sell the actual corn from the cribs. Remember there is no storage, insurance or handling charges. All is clean profit.

The only expense is our small commission. One-eighth of
one per cent per bushel for handling the deal.

67 Our Special Corn Proposition.

If this does not strike you as being just about the very best plan for making money out of December corn, won't you tell us so? Won't you tell us just where it seems weak to you? If there is any better or more satisfactory way of working for and with you, we want to know it—and do it.

How Much Corn Will You Buy?

$25.00 will buy 1,250 bushels of corn.
$50.00 will buy 2,500 bushels of corn.
$100.00 will buy 5,000 bushels of corn.

$200.00 will buy 10,000 bushels of corn.
$500.00 will buy 25,000 bushels of corn.
$1,000.00 will buy 50,000 bushels of corn.

Now, suppose you buy 5,000 bushels of December corn at 40c and protect the contract with a margin of 2c a bushel. It would be necessary for you to advance $100. Suppose we sell this corn for you at 42c, your profit will be $100 on the transaction. Later, on a reaction, we again enter the market and purchase 10,000 bushels of corn, investing your total credit of $200. This corn, let us say, we sell at 41 1/2c. You would make a profit of $200 on the trade, giving you a total credit of $400. A little later we again buy in for you 20,000 bushels of corn at 46 1/4c and sell this on the advance for 48 1/4c, which would give you a profit of $400, and a total credit of $800. We again make a purchase at 47c, of 40,000 bushels, protecting the same with $800. We dispose of this corn at 49c, making a profit of $800 and giving a total credit of $1,600. Finally we purchase at 50c, 80,000 bushels of corn and sell the same for 52c, which would give a profit of $1,600 and a total credit of $3,200, less commission.

One Hundred Dollars Will Do It.

The peculiar crop and market conditions we have just explained make it possible.

68 If you have $100 uninvested, or not as satisfactorily invested as it ought to be—and you know it's pretty difficult to invest from $25 to $500 profitably—you can do much worse than send it to us for December corn.

Think this over carefully and be sure you thoroughly understand just what our proposition is.

Government Bonds Versus December Corn.

If we had the choice between Government bonds and December corn, we would choose December corn without a suspicion of hesitancy. Government bonds are sure and safe—but slow.

December corn will earn more profits in three months than 4 per cent Government bonds can in ten years.

Figure it out for yourself and then you will believe it.

Rialto Grain and Securities Co.

Naturally you ask why should the Rialto Grain & Securities Co. be specially adapted for serving your investment interests better than any one else, right at this particular period.

Incorporated in this little brochure are views taken in our general offices, 202, 204, 208, 214, 216, 218, 220, 222 and 224 Rialto Building, St. Louis, Missouri.

From the President's private office to the most obscure corner of the mailing department, our equipment and organization is as nearly perfect as intelligent, watchful and progressive management can attain.

We have the experience of years and know the ins and outs of the brokerage business from corn to corn cake. We don't claim to know it all or to be infallible, but we do know
69 just a little bit more than the average trader, and it's the fraction of a second that wins a horse race.

We don't know how to run a store or stop a locomotive, but we do know how to execute orders on margins for the financial benefit of our clients.

Some of us have spent a lifetime in the corn pit. That is one reason why corn is our specialty. There are others just as good. In fact, every man on our staff is a specialist. One knows how to do this well, while another succeeds better in another line.

Our organization is such that every man does the one thing that he is best adapted to do. We don't dissipate our energies or abilities—we don't make mistakes—well, not the same ones twice.

You not only get the actual buying and selling services of this institution, but you have the added advantages that are coupled with our knowledge and long experience.

That our methods are absolutely right is evidenced by the belief that we have more customers on our books than any other brokerage firm in St. Louis.

Our customers know that our exclusive time and efforts are devoted to watching and furthering their interests. That our agents in every section of the country are alert and active and keep us informed daily of the various local and crop conditions. That our representatives in the markets of the world have their fingers on the pulse of trade.

We know what we can do. We want you to know it.

We want the opportunity of proving that we can and do get results—the only safe criterion of successful investments.

70 Smallest Investment.

The smallest investment you can make is $25.00. We will buy corn for you on a margin of less than 2c. in fact we will buy for you on a margin as small as 1c per bushel, but we would advise all of our customers to protect their holdings by a margin of not less than 2c per bushel. We believe that a larger margin is not needed on corn at this time.

Our greatest successes have been attained by buying on an advancing market, selling just before the market declined and investing both the principal and the profits after the reaction.

Sales Made Immediately.

All your money, principal and earnings are subject to instantaneous withdrawal—any day—any hour.

Write or telegraph and we will close your account and send the money due you within an hour, by telegraph, if you desire, or by draft in first mail.

Unlike ordinary investments, you have a commodity that you can realize on immediately.

Don't hesitate to investigate our proposition fully, for kindly understand that you will not obligate yourself in any way by the desire to know just exactly what we can do for you.

RIALTO GRAIN & SECURITIES CO.,
(Incorporated)
214 to 224 Rialto Building,
St. Louis, Mo.

The Court: You may consider the book offered and refer to it if you wish.

71 Sarah A. Warner, a witness of lawful age, produced, sworn and examined on the part of the United States, testified as follows:

Direct Examination

By Col. D. P. Dyer.

Q. State to the jury your name in full? A. Sarah A. Warner.

Q. Where do you live? A. Pittsfield, Mass.

Q. Were you living there in 1902? A. I was born there.

Q. I show you a letter, the exact date of which is a little dim by reason of the Post Office stamp on the front of it, but it appears to have been received at the Post Office Department by the Chief Inspector on January 17, 1903. Look at that letter and state if you wrote it to the Post Master General? A. (After examining the letter). I did.

Q. And did you mail it to the Post Master General? A. I think I probably mailed the letter myself. I sometimes sent letters by the man.

Q. But you wrote the letter? A. I did.

Q. Did you at that time enclose with the letter this printed matter connected with it "giant oaks from acorns grow?" A. (After examining letter): Yes sir. And I think I put another one into it also.

Q. But you did put this one in? A. Yes sir.

Judge Krum: We object to that, to the introduction of these papers, on the same grounds mentioned before.

The Court: These were before the Department, and formed the subject matter for investigation?

Col. Dyer: Yes sir.

Judge Krum: I submit, if your Honor please, that the reading of these letters will simply operate to drag into this
72 case that which does not belong there at all.

The Court: It is not a question of good faith. The only question is whether it was pending before the Department in the form of inquiry, and perhaps I might say in answer to your objection that in the light of your argument before the Jury it is proper for you to contend that this is a trifling matter, that only two complainants were before the Department, or something to that effect.

Judge Krum: Only two that were brought to the attention of the defendant at all.

The Court: Just enough to show that something was submitted to the Department, enough to put them upon inquiry.

Mr. Lehmann: We object because it is tending to create an issue which should not be made. The fact that the letter was received is the only thing that is competent.

The Court: If it was sent to the Department, it becomes necessary to show what it was. It might be inoffensive matter, something not involving or suggesting an inquiry. But it is the basis of a proceeding, again stating that it is not an issue in this case as to whether the Rialto Grain and Securities Company was in good faith carrying on business. The only question is whether a question was pending before the Department. It is not necessary to read them any more than to call attention to them.

Judge Krum: We make the same objection as before.

Objection overruled. To which ruling by the Court defendant, by his counsel, then and there duly accepted.

Col. Dyer: I will read the letter and offer the booklet.

The Court: The booklet was also filed before the Department?

73 Col. Dyer: Yes sir.

Judge Krum: She had evidently read Judge Grosscup's charge in the McDonald case.

The letter of S. A. Warner was admitted in evidence and is in words and figures as follows, to-wit:

P. O. Department
Div. of P. O. I. & M. D.
Distributing Desk
Jan. 17, 1903

Received
Washington, D. C.
Chief Post Office
Jan 17 1903
Inspector

Post Master General
Washington, D. C.

Dear Sir: I take the liberty of calling your attention to the enclosed circulars which are being sent broadcast through the country by the mails. The business is not one whit more respectable than a bucket shop and is more injurious than the lottery. I have not been taken in. But as a farmer one of the most unfortunate class of American citizens I wish to protest against the whole gamble in grains and food stuffs which injures the whole country, us poor farmers first and benefits none. Further, I am sure the post office department does not wish or intend to lend its aid to any such gambling schemes whose promoters should receive the same justice allotted to card sharpers and green goods men who are Christian gentleman beside them.

Respectfully,

S. A. WARNER,
Pittsfield, Mass.

Box 1003

74 (On the back) For the Post Master General personally.
P. O. Department
Received
Jan 16 1903.
Office of the Chief Clerk.

The booklet offered in evidence is as follows:

* * * * * * * * *

(Here follows pamphlet entitled "Giant Oaks from Tiny Acorns Grow," which is omitted pursuant to the stipulation of counsel set out at page 1 of this record.)

Adjourned until 10 o'clock A. M. March 23rd, 1904.

March 23, 1904, 10 o'clock A. M.

Court reconvened, pursuant to foregoing adjournment.

Frank Russell Fravel, a witness of lawful age, produced, sworn and examined on the part of the United States, testified as follows:

Direct Examination

By Col. D. P. Dyer:

Q. State your name in full, if you please, sir? A. Frank Russel Fravel.

Q. Where do you reside? A. Washington, D. C.

75 Q. What official position, if any, do you hold at Washington? A. I am clerk in the Department of Agriculture.

Q. How long have you been there? A. About four years.

Q. I show you a letter, dated Department of Agriculture, Washington, D. C., November, 3, 1902, and ask you to look at that letter and see whether it is not signed by you, and whether it was written or dictated by you? A. It is written by me and signed by me.

Q. Written and signed by you? A. Yes sir.

Q. I will get you to state whether the papers attached to this letter were received by you at Washington, and whether they were closed in a letter addressed by you to the Post Master General; There are two letters there, one a circular addressed to you and one addressed to Mr. Wasden. A. (After examining papers) Yes sir, these are the same, or very like the ones I sent.

Q. Who is Mr. Wasden? A. He is a clerk in the same room.

Q. Clerk in the same room with you? A. Yes sir.

Q. And did you obtain the letter addressed to Benjamin C. Wasden, Department of Agriculture, Washington, D. C., from him? A. I did, yes sir.

Q. And this letter was mailed by you to the Post Master General, or sent by messenger? It was mailed.

Q. Sent by mail? A. Yes sir.

Q. Was it sent by you about the date it was written, or on that date, November 3rd? A. I think it was sent on that day.

The Court: Q. What year?

Col. Dyer: November 3, 1902.

(No cross-examination)

76 Col. Dyer: I offer in evidence the letters that were sent to the Post Master General.

Judge Krum: We make the same objection in regard to these that we did with reference to the other letters.

The Court: They are admitted simply because they bear upon the question that an inquiry was pending, and the nature of the inquiry, and for no other purpose.

To which ruling of the Court the defendant, by his counsel, then and there duly excepted.

Col. Dyer: I will read this letter, and then, if your Honor please, I would like to read or have read also the letters that were enclosed in this letter to the Post Master General that the witness identifies as having written.

Counsel for the Government here read the letter of F. R. Fravel, dated Nov. 3, 1902, which is in words and figures as follows, to-wit:

P. O. Department
Div. of P. O. I & M. D.
Distributing Desk
Nov. 4, 1902
Received
Washington, D. C.

Department of Agriculture
Washington, D. C.

November 3, 1902.

Postmaster General,
Postoffice Department,
Washington, D. C.

Dear Sir: I desire to call attention the enclosed circulars, mailed at St. Louis, Mo., in which the date of mailing
77 is blank. This is the case in all of these circulars that I have seen and it looks as though it is a case of fraud, as it may easily be said, in case of investment, that the order was not mailed in time. Is it presumed that it is the intention of the Postoffice Department to have the date stamped on these the same as on other mail matter.

Very respectfully,

F. R. FRAVEL.

(Stamped on the back)
P. O. Department
Received
Nov. 4, 1902
Office of the Chief Clerk.

Col. Dyer: I now read the letter accompanying the above.

Judge Krum: We submit, your Honor, that it is immaterial what this letter is. The only question is whether there was any action taken on it by the Post Office Department.

Col. Dyer: I submit that it is part and parcel of the inquiry, so I may have before the jury what the Post Master General had. It will be for them to determine in a measure whether there was a matter pending before the Department at the time, and the character of the complaints ought to be shown to the jury so that they may understand what the letter was written about.

The Court. The rule is the same as before. It is admitted to show that there was a matter pending before the Department, and the nature of the matter. Both of them are important under the indictment in this case. What was the nature of the matter is important.

Counsel for the Government here read the letters last referred to, the same being in words and figures as follows,
78 towit:

Hugh C. Dennis,
President,
Pres't Dennis Underwriting Agency
Wm. M. Leftwitch,
Vice-President.

Wm. D. Mahaney, Secretary.
George F. Munsa,
Treasurer,
Taylor & Hatlan,
Counsel.

Rialto Grain and Securities Company
(Incorporated)
Grain, Cotton, Bonds and Provisions
Orders executed on Margins.
Private Wires.
Suites 202, 208 and 214 to 224 Rialto Building.

Special References:
Kaston & Sons, Company,
St. Louis,
Skinner & Kennedy Company,
St. Louis,
The Barr & Widen Mercantile Agency Company
St. Louis,

Bankers:
Fourth National Bank.
Commonwealth Trust Co.
Germania Trust Co.
Telephones:
Kinlock A 1747
Bell, Main 3074.

St. Louis, Mo. October 29, 1902.

F. R. Fravel,
Washington, D. C.

Dear Sir: A short time since we mailed you our booklet advising the purchase of December corn. At the time we mailed this booklet December corn was quoted on the Chicago market at 43 cents. Today the market price is 51 cents. An investment made then would show eight hundred per cent profit to date. Can you find any other safe investment in America which will return any such profit? We think not.

If you have any spare money, from $25 to 500, invest it in the purchase of corn for December delivery, and if your investment is properly managed your profits will be enormous.

For the past year we have devoted our time, our resources and our money exclusively to obtaining every bit of information possible regarding the corn situation. Last winter we, in the face of a falling market, predicted 75-cent corn for July.

July corn sold as high as 90 cents, and such of our customers as took our advice made enormous profits.

Before the expiration of the July option our every energy was put forth to find out the true situation of corn for September and December deliveries, and, on information so obtained, we predicted 65 cent corn for September. Twice since then has September corn sold above 65 cents. We now believe that December corn will sell at or above the price July corn sold for,—our reasons being that there is little or no old corn left in the country, not enough for manufacturing purposes alone for more than sixty days; and James Patten with his following and the Armour crowd of Chicago, with their friends in that city, New York and St. Louis, have since July bought over thirty millions of bushels of corn to be delivered to them in December. Again to repeat, there is no old corn in the country to speak of, and these gentlemen who now hold corn bought to be delivered to them in December may put the price to any figure they wish. This is why we tell you
79 to buy December corn. Buy all you can carry, and buy it at once.

We solicit your patronage and suggest that you wire your order and let your remittance follow by mail.

Very respectfully yours,
RIALTO GRAIN AND SECURITIES COMPANY,
Hugh C. Dennis,
President.

P. S.—The enclosed leaflet may interest you.

Col. Dyer: The letter addressed to Wasden, Washington, D. C., and enclosed in this letter (indicating) is a different letter from the one just read, and the same is one of the letters introduced in evidence yesterday, and I will consider it is in evidence. It may be alluded to hereafter, without taking up your time by reading the letter of Wasden now. Also the booklet [refferred] to, inclosed in these communications and sent to the Post Master General, so that the whole matter may be embraced in this letter.

Blain W. Taylor, a witness of lawful age, produced, sworn and examined on the part of the United States, testified as follows:

Direct Examination

By Col. D. P. Dyer:

Q. What is your name? A. Blain W. Taylor.

Q. Where do you live, Mr. Taylor? A. In Washington, D. C.

Q. What official position, if any, do you hold in Washington? A. Chief Clerk of the Post Office Department.

Q. And how long have you been Chief Clerk of the Post Office Department? A. Since 1896, February, 1896.

Q. Will you state to the Jury whether matter addressed to the Post Master General is received by you, as Chief Clerk? A. Yes, sir, correspondence addressed to the Post Master General passes through the Chief Clerk's office, and is there
80 answered, either the answers prepared or referred to the proper bureau for attention.

was

Q. Now, there a stamp used in your office indicating the date of the receipt of letters in your office, upon which is put the stamp? A. Yes, sir.

[A. Yes sir.]

Q. I show you a letter addressed to the Post Master General, signed "Bella Evans", and ask you to look at that letter and state whether the stamp that is upon the face of that letter is the stamp of your office as Chief Clerk of the Post Office Department? A. (Examining letter) The stamp on the face is not my stamp, no sir. The stamp of the Chief Clerk of the Post Office Department appears on the back of the letter.

Q. When was that letter received at the Post Office Department? A. November 1, 1902.

Q. Does that bear the receipt stamp of the Post Office Department? A. Yes sir.

Q. Look at the next letter there of K. C. Hout, and state when that letter was received at the Post Office Department, if you know? A. That letter was received at the Post Office Department October 31, 1902.

Q. After the receipt of those letters, what was done with the letters thus addressed? A. Those letters were transmitted to the division of Post Office Inspectors and Mail Depredations for attention.

Q. Who is at the head of that? A. William E. Cochran is Chief Post Office Inspector and head of that division.

Q. I show you a letter signed "S. A. Warner", of Pittsfield, Mass., with certain papers attached, and ask you to look at that letter and state to the Jury when that letter was received
81 at the Post Office Department? A. That letter was received at the Post Office Department January 16th, 1903.

Q. And what course did that letter take after receipt at the Post Office Department? A. That letter was referred to the Chief Post Office Inspector.

Q. Did that bear the stamp of the Post Office Department? A. Yes sir.

Q. I show you a letter, dated New Brighton, Staten Island, signed "Arthur W. Allen", and ask you to look at that letter and state, if you can, when that letter was received at the Post

Office? A. (After examining letter): That letter was received at the Post Office Department December, 9, 1902.

Q. And what course did that take after its receipt by you as Chief Clerk? A. That was forwarded to the Chief Post Office Inspector for consideration and attention.

The Court: Q. For attention? A. For such action as he thought proper.

Mr. Dyer: Q. I show you a letter dated November 3, 1902, signed "F. R. Fravel," and ask you to look at that letter, with the accompanying papers, and see when they were received at the Post Office. A. (After examining letter): That letter was received at the Post Office Department November 4, 1902.

Q. And what course did that take? A. That was referred to the Chief of the Post Office Inspectors.

Q. Now, under the rules of your department and the mode of [transaction] business at the Post Office, or the ordinary way of carrying on business at the Post Office, to whom would those papers go after the receipt by you, as Chief Clerk?

Judge Krum: We submit, if the Court please, that is
82 to be determined by the rules, if there are any.

The Court: If the rules are not in evidence, he may state what was actually done with them.

A. I would not be competent, I could not state positively what was done after they were referred to the Chief Post Office Inspector.

Col. Dyer: Q. How did they come to be referred to the Post Office Inspector? A. Because it is matter—those complaints are matters under the Customs Laws Rules and Regulations of the office, and are properly referable to that office for such attention as, in the judgment of the Chief Post Office Inspector, it is proper to give them.

(No cross-examination.)

George M. Smith a witness of lawful age, produced, sworn and examined on the part of the United States, testified as follows:

Direct Examination

By Col. D. P. Dyer:

Q. State your name in full? A. George M. Smith.

Q. And your residence? A. Washington, D. C.

Q. How long have you resided there? A. Since 1877.

Q. What official position, if any, do you hold at Washington? A. [A.] I am clerk in charge of a section in the office of the Chief Post Office Inspector, under the Fourth Assistant Post Master General.

Q. What section is it that you have charge of. A. It is designated as "C", or "Miscellaneous" section, in which

83 are jacketed and referred to the field and proper record made and kept of cases wherein fraud is alleged, fraudulent use of the mails is alleged, and charges against Post Masters, letter carriers, etc.—any charge touching postal officials.

Q. And the misuse of the mails, I take it? A. Yes sir.

Q. When complaints are lodged with the Post Office Inspector in charge, or the Chief Post Office Inspector, more properly speaking, who jackets and sends out as you say to the field—that is, you mean by that, sends out to the local inspectors— A. To inspectors in charge. They are referred, as I think, to the fifteen or sixteen inspectors in charge throughout the country, and the cases, after being jacketed, are referred direct to them for distribution and action, and the inspectors work under them.

Q. I show you these letters that have been introduced here, of Bella Evans and K. C. Hout, and call you- attention to the jacket in which they are enclosed. State whether that jacket and the endorsements thereon were made under your direction? A. Yes sir, they were.

Q. Having received these letters, they are enclosed in that kind of a jacket? A. Yes, sir, in a jacket.

Q. And then, from that office, forwarded to the local inspector in charge at St. Louis, were they? A. Yes, sir.

Q. Now, you may explain whether, in your department a number is given to these different complaints? A. Yes sir, that is always done when the case is first—before that, search is made; upon receipt of the complaint at the Department after it has been received at our office, a careful search is made to see if we have a jacketed case against the person, company or corporation complained against. That is to avoid dup-

84 licate cases. That was done in that case.

Q. Then this number, case "No. 13778 C", was the number you placed upon this case? A. Yes sir.

Q. After having jacketed the case and given this complaint a number, what was the course pursued in reference to any subsequent complaints against the same company? A. At the same time that jacket was made, there was an exact duplicate, called a carbon duplicate, that is retained for our records, ruled and fixed for the record of any subsequent papers or complaints that might be received, and their disposal is to be noted, should be noted on the official carbon or duplicate carbon, and that case filed in a specially prepared book kept at the Department.

Q. I show you now what purports to be a carbon copy retained in the office and ask you if that is the official record of complaints against this Rialto Grain and Securities Company

retained in the Post Office? A. That is the original of that case against the Rialto Grain and Securities Company at St. Louis.

Q. On that carbon are the subsequent complaints endorsed as they come in? A. They are.

Q. Now, state whether or not the subsequent complaints after this case was first jacketed, when they came in were they given the same number given to that particular case, and included in the same files? A. If a departmental custom was followed and the clerk who placed them did his duty, he should have placed a slip directed to the inspector in charge at St. Louis, referring to the case under the above number, and that number should have been 13,778 C, as given here.

Q. I will ask you to look over that record you have of your office, and I will ask you to state—that will appear by
85 offering the papers—if subsequent complaints were entered; were subsequent complaints entered at Washington? A. Yes sir, quite a number.

Q. And that is the record kept in your office of this particular case? A. Yes sir.

Q. Will you explain to the jury, after the case is thus made up and sent out to the local inspectors for examination, when, under the rules or proceedings of the Department is that case closed?

Judge Krum: We submit, if the Court please, that will be determined by the regulations themselves.

The Court: If the regulations themselves do not speak of the matter at all, do not refer to the matter of closing a case, then of course the custom of the department is proper.

Col. Dyer: There is no direct provision made in the rules as to when a case should be closed. I asked him what the course of business is when a case is closed.

The Court: That is, the usual course of business in the department?

Col. Dyer: Yes sir.

The Court: He may answer that.

A. A case is finally closed in our office when the papers are referred to him and his report is returned to the office with a recommendation for final action. An inspector, usually when he is done with a case and worked it out to a finish, he will return it to the department with whatever recommendation seems proper to him. He returns it, of course, through the inspector in charge of his division, who also in turn either approves or disapproves the recommendation. The recommendation in a case of this character might be a recommendation for the issuance of a fraud order and that the case be closed. A
86 case is never closed until the inspector's report and all

papers referred to him are returned to the department with the jacket and his final report therein.

Q. I will get you to state whether or not from the records in your office these papers I have asked you about called "Complaints", whether these papers ever have been returned to the department, and whether there has been any report made to the department and an official report of this case made?

Mr. Krum: We object.

The Court: I think he can state whether a report has been made, but not what the report is.

Col. Dyer: Q. You may state whether an official report has been made, and the case closed or not.

Judge Krum: We submit that if the fact that a report has been made is competent, then the report itself is also competent.

Col. Krum: I asked him whether an official report of that case has been made

The Court: I think the question is competent. It may be that the case was closed before the receipt or payment of money by the accused. It is beyond me to know whether the case was pending at the time of the receipt of the money.

A. I can only answer up to the time I left the department. After I was subpoenaed to report here in this case—no final report had been received in my office up to that time.

Q. When was that? A. I left there Saturday evening.

The Court: Q. That was last Saturday evening? A. Yes sir.

Col. Dyer: Q. I will get you to state whether or not when these papers are received in your office, there is a stamp used in the Chief Inspector's office to indicate the date of the
87 receipt? A. Yes. And every piece of mail received there, every important piece of mail, every letter, should bear the stamp of receipt in our office.

Q. When this case was first made up and jacketed—I will get you to look at the letters of Bella Evans and Mrs. K. C. Hout and state when these letters were received in your office? A. (after examining letters) The letter of Evans was received November 3, I think the stamp is on it, it may be a three or an eight, the stamp of the office is there, but my eye-sight is poor and I cannot tell whether it is a "3" or an "8", but it looks like an "8". (after examining further) No sir, it is November 3. The other letter of Mrs. Hout was received November 1, 1902.

Q. Now, can you state when these two letters were referred to Post Office Inspector Dice in charge of the St. Louis office? A. On November 7, 1902, they were forwarded from the Post Office department on the evening of that day.

Q. I will ask you whether these printed instructions on the back of this check were sent out to the Post Office Inspector in charge? A. Yes sir, that is part of his instructions for the government of the inspector handling the case.

Col. Dyer: I offer the paper showing reference to the Post Office inspector.

The Witness: May I state that that record is an official record from the Department, and should not go out of the custody of the Post Office Department unless the Court so directs.

The Court: Q. Is that the original jacket? A. I beg pardon, the paper I first had in my hand, the original jacket, is an official record of the department.

Col. Dyer: I offer this jacket and all these papers, this
88 jacket being the original record sent out, I offer the original record of the Post Office department in reference to this matter, with the endorsements on this original record.

The Court: Is that the original one that was sent out to the inspector in charge at St. Louis? A. The one in the District Attorney's left hand is the one that belongs in the department, brought by me with permission of the department.

The Court: Q. That is the one you referred to as being kept in your office, being a duplicate of the one sent out to the inspector? A. Yes sir, with the additional complaints on it.

Col. Dyer: Q. This I hold in my left hand is the original record from your department? A. Yes sir.

Q. The one in my right hand, sent to Col. Dice, is a copy of that record in the department up to the time it was sent out? A. Yes sir, embracing only the first two names.

Q. The others were added to this after it was sent out here? A. Yes sir.

Q. But the first one was sent out and referred to Col. Dice with the same number as endorsed on this (indicating)? A. Yes sir, the same number.

Col. Dyer: I will offer these things, as showing the original record.

Judge Krum: There are only three or four entries there that are competent, because they are the only ones that apply to these papers that have been introduced thus far.

Col. Dyer: I do not ask to read any portion of this record only the complaints that had already been made that were covered by the time the Government alleges the defendant was employed as counsel.

89 The Court: Q. It is the record of this matter before the Department? A. Yes sir.

Q. A record of what was done and what occurred there? A. Yes sir.

The Court: You may read it.

Judge Krum: We object to it as not competent, showing no such situation as the indictment covers.

Objection overruled; to which ruling by the court defendant, by counsel, then and there duly excepted.

Counsel for the Government read in evidence the papers referred to, which are in words and figures as follows: to-wit:

90 Papers and Reports of
Inspector .....
Sent to .....
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P. L. R. R. of 1902.

Miscellaneous.

Case No. 13778 C.

Chief Post Office Inspector.

(class office.)

Office St. Louis 1
County
State Mo.
Subject
Alleged fraudulent scheme.
Complainant Bella Evans
Mrs. K. C. Hont
Address 856 3rd St.
Albany, N. Y.
Date Oct. 30-02
Vio. of Sec. 1617
By Rialto Grain & Security Co.
Address St. Louis, Mo.

Washington, D. C., Nov. 7-'02

Respectfully referred to Post Office Inspector in charge at St. Louis

for investigation and report.

W. E. COCHRAN,
Chief Inspector.

(Stamped on the back is the following) P. O. Department received Oct. 3, 1902. Office of the Chief Clerk.

Instructions to P. O. Inspectors.

1. Upon receipt of this case the inspector will enter upon its investigation, either personally or by letter, and as soon as possible will return it to the Department, with the result properly reported, together with all papers relating to it.
2. Inspectors will render their reports, in each case, in the form of a letter, and not indorse them upon the jacket.
3. Inspectors are not allowed to transfer cases sent to them for investigation without special instructions or permission from the Department.
4. Inspectors are expected to avail themselves of the opportunities afforded them, in visiting Post Offices in their respective districts, to impress upon Postmasters the importance of reporting promptly to the Chief Inspector every complaint of loss by mail of letters or parcels, whether registered or unregistered, made to them or coming to their knowledge.—Sections 668, 669 and 670. Regulations 1893 and Sections 278 & 279 & 505 and 1565.

91 Correspondence.

Complaint of F. R. Fravel, Washington, D. C. sent Inspector Dice Nov. 8/02.

Complaint of Arthur M. Allen, New Brighton N. Y. sent Inspr. Dice Jan'y 5/03.

Complaint of S. A. Warner, Pittsfield, Mass. sent Inspr. Dice, Jany 21/03.

Complaint of E. Oulette, Stafford Sprgs. Conn., sent Inspr. Dice, Jany. 28/03.

Complaint Hon. Jesse A. Frye, U. S. Atty. Washington, sent Inspr. Dice Mch. 10/03

Complaint of F. P. Andrews, Coden, Ala. sent Inspr. Dice Mch. 20/03.

Miscellaneous

Case No. 13778C

Chief Post Office
Inspector.
(class office)
1

Office St. Louis
County
State Mo.
Subject: Alleged fraudulent scheme.
Complainant Bella Evans
Mrs. K. C. Hont
Address 856 3rd St. Albany, N. Y.
Date Oct. 30'02
Vio of Sec. 1617
By Rialto Grain & Security Co.
Address St. Louis, Mo.
Washington D. C. Nov. 7'02
Respectfully referred to [Post]
Post Office Inspector in charge at
St. Louis
for investigation and report
W. E. COCHRAN
Chief Inspector.
Date returned.....
Date closed .....
Papers and report Inspector .....
Referred to .....

Reference.

S

92 Col. Dyer: Q. Explain that "1617", as compared with the Revised Statutes? A. Section 1617 of the Postal Laws and Regulations is based upon that section of the Revised Statutes that empowers action against persons for using the mails in furtherance of any fraudulent scheme against the public and others.

Q. That was my understanding, that is section 1617 in this book (indicating Postal Laws and Regulations), is the same as section 5480 of the Revised Statutes, as amended? A. Yes sir.

Col. Dyer: I will read the parts referring to violation of section 1617 by the Rialto Grain and Securities Company.

(Counsel reads)

Col. Dyer: Then follow complaints subsequent to that time, which I have not introduced and will not read.

Col. Dyer: Q. I will ask you to look at this letter of J. R. Fravel, dated November 3, 1903, with the papers attached to it, and state to the jury when they were received in the office of the Chief Inspector? A. They were received in the office of the Chief Inspector November 4, 1902.

Q. And what is the number given? A. 13778 C.

Q. Look at this letter of Allen's, and state when that letter was received at the inspectors office. (Handing paper to witness)? A. That letter was received December 30, 1902.

Q. And recorded? A. Recorded January, 5, 1903.

Q. And what is the number given to that? A. 13778 C.

Q. The same as the original case? A. The same as before, yes sir.

Q. And does that show when it was referred to Mr.
93 Dice, or does your record show? A. January 5, 1903 is the date of the reference to Mr. Dice.

Q. Look at the letter of S. A. Warner and state when that letter was received at the Chief Post Office Inspector's Office (hands letter to witness). A. This letter of S. A. Warner was received at the office of the Chief Post Office Inspector January 17, 1903.

Q. And what became of that? A. On January 21, 1903, it was referred to the inspector in charge at St. Louis, Mr. Dice, under the same number, 13,778 C.

Cross-Examination,

By Judge Krum:

Q. What is called the "Complaint of Bella Evans" and Mrs. K. C. Hout, was referred to the Post Office Inspector in charge at St. Louis, on the 3rd of November, 1902? A. Yes sir.

Q. As shown by this jacket, as you call it? A. I call that a retained carbon of the jacket.

Q. Now, as I understand you, no report had been made upon that complaint so referred, down to the time when you were subpoenaed and left Washington? A. No sir, I didn't say that, I said for final report.

Q. Was any report made? A. A report was made, what is called a special, or preliminary report was made in that case, I think, in August, or about the 1st of September. There is a memoranda under your right hand.

Q. That is in August, 1903? A. 1903.

Q. No report had been made down to the 1st of April, 1903? A. No sir, no report.

Q. No report of any kind, preliminary, or otherwise? A. None have come through the regular channels.

94 Q. —as far as you know? A. No sir.

Q. Accordingly, this so-called complaint of Bella Evans and Mrs. K. C. Hout, was, so far as any inquiry in regard to it concerns located here in St. Louis, from the time

it was referred in November, 1902, down to the 1st of April, 1903—that is, whatever action was to be taken with reference to that co-called complaint, was to be out here? A. Yes sir.

Q. Not before any person or any officer or any person connected with the Post Office Department in Washington, that is, with the office of the Post Office Department? A. I cannot say as to that. There might be communications between the Inspector in charge and the Chief Inspector, either telegraphic or by letter, touching that case that I might not know of. But I can speak of matters that would take the ordinary channel in cases of that character; that, so far as the records would show, would be during the interval to which you have referred in the St. Louis Division.

Q. It was not then before anybody but the inspector in charge here for St. Louis? A. Well, I could not—

Q. I mean, in the ordinary course of procedure? A. We would regard it as before the department under action.

Q. But whatever action was to be taken would be here by the Post Office Inspector in charge, wouldn't it? A. I cannot limit my answer to that.

Q. I do not mean to say there could not be inquiries passing from St. Louis to Washington, or Washington to St. Louis. A. The public would not know the disposal of that case, and the inquiries would be made at Washington concerning it.

Q. You are not answering my question. I want to know, as you have indicated already—whether the matter was
95 before any subordinate or official in the department at Washington for action down to the time when some kind of a report came from St. Louis, down to this reference? A. I would regard the matter before the department—

Q. I am not asking whether you regarded it before the department or outside of the department. I want to know from you what official in Washington had this matter in charge after it was referred to the Post Office inspector here in charge? A. The Chief Inspector, I would say.

Q. What had he to do about it? A. He has charge of all the inspectors.

[A.] But this had been referred now, out of his office into this local office in St. Louis, for action here. Now, after that reference, wasn't it here in St. Louis? A. The case was here?

Q. Yes? A. Yes sir.

Q. That was applicable to all of these complaints, was it not, that after the papers were referred to St. Louis, and until the report was made from St. Louis, they were pending here? A. Pending here, yes sir.

Q. And as I understand you, in the regular course of business, a report would be made from St. Louis before action was taken in Washington, wouldn't it? A. Yes sir, from the inspector.

Redirect Examination.

By Col. Dyer:

Q. To make the matter a little more specific, these inspectors, including Mr. Dice, the Post Office Inspector in charge, is, as you know from the rules and regulations of the department, under the direction and control of the inspector at Washington; do you understand that?

96 Objection on the part of the defendant, on the ground that the regulations speak for themselves.

The Court: The regulations so state, and it is not necessary for him to recite that they are subject to the control or under the directions of the inspector in chief at Washington.

Col. Dyer: Q. You have stated pretty fully, I think, the course taken by the department with reference to these latter complaints. That is, the department refers it here for the purpose of taking evidence and making inquiry into the matter; is that so? A. That is true, sir.

Q. And upon that evidence action is taken by the local inspector here and report is made to the inspector in charge? A. Yes sir.

Q. And upon that report and the examination submitted of evidence, or otherwise, that inspector acts; he can approve or disapprove of the report of the local inspector? A. Yes sir.

Recross Examination

By Judge Krum.

Q. Where does it go then? A. The report, in a case of this character, would quite likely go to the Assistant Attorney General for the Post Office Department.

Q. He is charged under the regulations, isn't he, with the preparation and hearing of such cases; isn't that the very language of the regulations? A. I am not sure as to that, but I think so. That is my understanding of it, that he is the law officer of the department.

Q. Now, isn't it a fact that Section 21 of the Regulations, charges the Assistant Attorney General for the Post Office Department, with the duty of hearing and preparing cases relating to the misuse of the mail in furtherance of schemes
97 to defraud the public? A. I think that is the fact.

Redirect Examination

By Col. Dyer.

Q. You mean by that that if the local inspector at St. Louis was to recommend in his report of this case to the inspector in charge at Washington that a fraud order be issued, then the matter would go [—] the Assistant Attorney General for the department for hearing, is that true? A. Yes sir.

Q. And he himself would determine as to whether or not a fraud order should issue? A. Yes sir, that is correct.

George A. Dice, a witness of lawful age, produced, sworn and examined on the part of the United States, testified as follows:

Direct Examination

By Col. D. P. Dyer.

Q. What is your name? A. George A. Dice.

Q. And your official position? A. Inspector in charge of the St. Louis Division.

The Court: Q. Of what? A. Comprising the states of Iowa, Missouri and Arkansas, with the exception of Kansas City, Missouri, which is excepted.

Col. Dyer: Q. Of the Post Office Department? A. Yes sir.

Q. How long have you been an inspector, Mr. Dice. A. I think about 23 years.

Q. In 1902 and 1903 where were your head-quarters? A. St. Louis?

Q. Were you Post Office Inspector in charge at St. 98 Louis at that time—during that time? A. I was.

Q. And various other inspectors of the Post Office department reported to you for duty, is that true? A. Yes sir.

Q. And at that time how many inspectors were there in this department reported to you as chief? A. In 1902?

Q. Yes? A. It varies from twelve to fourteen. I don't remember the exact number.

Q. I show you a paper [market] "In case 13778 C", and ask you to state whether you ever saw that paper, and if so when you first saw it? A. (After examining paper): This paper was received in my office and made a record in my office on the 10th day of November, 1902.

Q. What was done with it then? A. On November 14, 1902, it was referred to Post Office Inspector M. G. Price for investigation.

Q. I will get you to state whether or not that, with the number as given on that, has been in charge of your office since the time of the receipt of that letter? A. It has been.

Q. State whether or not other complaints not included in the complaints of Hout and Evans were subsequently forwarded to you from the Post Office Department in that same case? A. They were, and numbered.

Q. Has there ever been, by your office, or by you, a final report, what you call a final report, made to the Chief Inspector at Washington in this case?

Objected to by counsel for defendant as immaterial. Objection overruled, for the reasons before stated, if the case was

pending before the department at the time the alleged offenses were committed here.

To which ruling of the court the defendant, by his counsel, then and there duly excepted.

A. There has not.

Cross-Examination,

By Judge Krum:

Q. Mr. Price made an investigation with reference to this so-called complaint of Bella Evans and Mrs. Hout after it was referred to him by you, didn't he? A. He did.

Q. He made a report to you, didn't he? A. I don't recollect that he made any written report.

Q. Did he make an oral report? A. He made an oral report that he did not conclude his investigation in the case.

Q. Did he investigate it further after he made the oral report? A. It was again investigated in August, July and August, of 1903.

Q. About what time did he make the oral report to you? A. I do not recall that.

Q. How soon after the 14th of November, if you can fix the date? A. It was soon thereafter, because my recollection is he took it up at once.

Q. Within a day or two wasn't it? A. I think so.

Q. Now, what was the report that he made? A. Well, his report at that time was to the effect that the two complaints were not of such a character as to warrant action in the matter of a recommendation of a fraud order, or something of that kind.

Q. Do you recall whether, after having given you that indication, Mr. Price made any further investigation of the complaint of Bella Evans and Mrs. Hout, do you remember as to that? A. That may have been taken up in connection with a number of other complaints at the time of the investiga-
99 tion by Mr. Price and Mr. Piatt.

Q. That was later, sometime in 1903? A. Yes, sir, that was in July and August, 1903.

Q. You don't recall, do you, whether,—after this matter had first been referred to Mr. Price and he had given you this indication that you have furnished us,—he did anything further until the general investigation of the affairs of the Rialto Grain and Securities Company which took place in July or August of 1903? A. In July and August, 1903, yes sir.

Q. Mr. Dice, I show you this original record of the office at Washington. (Hands paper to witness.) Is there anything about it, taking, for instance, that entry in regard to Fravel; is there anything about it that recalls to your recollection when that was received here in St. Louis, at your office? A. The Fravel complaint?

Q. Yes. Or is there a record here, Mr. Dice, from which by turning to it you can tell when it was received here in St. Louis? A. No sir, there is not. These files that are forwarded here under the file number, are simply filed in the case without any further record in the office.

Q. Do you recall the receipt of that particular matter here? A. That particular matter, I do not.

Q. So you would not be able to tell us, perhaps, what action was taken by yourself in regard to it; or have you any definite recollection in regard to that particular complaint? A. I have no distinct recollection in regard to that particular complaint. If it was sent on the 8th, it should have been received here on the 10th, and would be, in the natural course of business, filed in that case "13778 C".

100 Q. And then it would be turned over, wouldn't it, to some one of your subordinate inspectors? A. If the case was in the hands of an inspector, which was the case on the 14th, it was referred to Inspector Price. If that reference had been received after the case had been referred to him, the file would be referred to him for the filing of the case.

Q. It would go into his hands? A. Yes sir.

Q. Do you recall whether Mr. Price made any report of any description with reference to this Fravel incident? A. If the Fravel incident is mentioned it must be in his report of August 20, 1903.

Q. That is the formal report that was made after that general investigation— I mean, along in November, 1903, after the receipt of this paper in your office, do you recall any report made by Mr. Price in regard to it? A. No sir, I do not.

Q. This is shown, that the complaint of Arthur M. Allen was referred to your office January 5, 1903. That would bring it here, say, on the 7th of January, 1903. Mr. Price had the other matters in charge and that would be sent to him, wouldn't it; the probability is that was turned over to him? A. If the case was still in his hands that would be referred to him in my office.

Q. And that would be the situation in regard to the complaint of S. A. Warner, which appears to have been sent to your office on the 21st of January, 1903, wouldn't it? A. It would.

Q. You are not able to recall, are you, whether Mr. Price, if he had charge of these last matters, made any report to your office in regard to them until the final examination therein in the summer of 1903? A. He did not make a final report, he made a special report in August in connection with in-

101 spector Piatt.

Q. That was the result of a full investigation of the affairs of the business of the Rialto Grain and Securities Company? A. It was.

Q. Which was begun in July or thereabouts, of 1903, or was it earlier than that? A. July and August, 1903.

Q. During that months—Mr. Price and who else? A. Inspector Piatt.

Q. They made a full examination of the affairs of the company and reported to you as Chief Inspector in charge here? A. Yes sir.

Q. And between November and the time of this full investigation, do we understand you that no report was made except as you have indicated, by Mr. Price in the month of November? A. No written report that I recall.

Q. The only report, other than the written one which was made in August, 1903, is the oral report you have indicated? A. Yes sir.

Redirect Examination.

By Mr. Dyer.

Q. Mr. Price was an inspector under your charge and direction, was he? A. Yes sir.

Q. All reports made by him or any other inspector in this division, was to be made to you, and you, as Chief Inspector, could approve or reject the report made by your subordinate, is that true? A. Yes, sir.

Q. Now, as I understand you, whatever examination was made by Mr. Price in November, 1902, was a report made verbally to you of it in which he had not concluded the examination? A. That is right.

Q. And that examination of that concern was before
102 you as inspector in charge from the time it was first made up to the present time? A. It was.

Q. These reports about which Judge Krum has asked you, in July, and August, 1903, were partial reports in reference to this particular matter, but no final report has been submitted by you to the Post Office Inspector in charge at Washington? A. Yes sir.

Q. That is true, isn't it? A. This case, since its receipt in my office on November 10, 1902, has been a subject of consideration since that time. There has never been a final report made; the case is still pending, in the hands of my office.

Q. And the papers forwarded to you have never been returned to Washington? A. Have never been returned to Washington; they are files in the office; the case taken up by Mr. Price and partial investigation by Mr. Price, and action taken so far as the court here is concerned, in July and August of last year.

Recross-Examination

By Judge Krum:

Q. When did the company go out of business? A. The Rialto Grain and Securities Company?

Q. Yes sir. A. I do not know that it is out of business.
Q. Hasn't it been out of business for a good many months? A. I do not understand so.

W. E. Cochran a witness of lawful age, produced, sworn and examined on the part of the United States, testified as follows:

103 Direct Examination,

By Col. D. P. Dyer:
Q. Your name in full? A. William E. Cochran.
Q. Your place of residence? A. I am residing temporarily at Washington, D. C.
Q. Your official position? A. I am Chief Post Office Inspector.
Q. How long have you been Chief Post Office Inspector? A. Since late in 1898.
Q. Prior to that time were you inspector in the Post Office Department? A. Yes sir.
Q. How long have you been connected with the Postal service? A. I became a post office inspector in 1891; before that I was clerk in the office of the auditor of the Post Office Department, from 1884 to 1891.
Q. Where is your office at Washington located? A. It is on the 4th floor of the Post Office Department building.
Q. I want to ask you to identify certain papers, if you can, that I will present to you, with a view to ascertaining the course of business through the Post Office Department, if you know. I show you the letters of Bella Evans and Mrs. K. C. Hout, and ask you to state whether or not you recognize that as the stamp used in your office upon receipt of such letters? [Q.] (after examining letters): Yes sir, that is the stamp of the distributing clerk.
Q. Now, will you state to the Jury what the course of procedure is in the department upon the receipt by the Post Master General of letters of that kind, or these particular letters; what is the course of procedure, and what is done by it,
104 and how the department operates upon that information? A. A letter received by the Post Master General alleging a violation of the Postal Laws or Postal Regulations, would come down to my division; it would go to the distributing desk and by the distributing clerk be sent to the "C" section for jacketing.
Q. Then what course would it take after that? A. There would be some examination made of it to see whether it properly justified—whether there was enough in it to warrant an investigation, and if the conclusion was that it should be properly investigated, a case is made up and referred to the in-

spector in charge of the division in which the alleged violation occurs.

Q. Will you state how many divisions there are? A. There are fifteen divisions.

Q. And the headquarters of one is in St. Louis? A. Yes sir.

Q. —of the fifteen divisions? A. One of the fifteen.

Q. Now, the officer in charge here, for instance, Col. Dice, is designated as Post Office Inspector in Charge, is he? A. Yes sir.

Q. And through him your correspondence and all correspondence with this division is had? A. Yes sir.

Q. You have no correspondence with any subordinate from here, unless especially detailed by you, have you? A. No sir.

Q. Anything referring to this division is referred to the inspector in charge who, under your rules and regulations, has a right to designate some employe, some other inspector, to do the work? A. Yes sir.

Judge Krum: I submit that if Col. Dyer would try
105 real hard, he might make a leading question out of that?

Col. Dyer: Q. This particular case that you have now in your hands, will you state whether that case has been pending before the officers of the Post Office Department since the receipt of these letters?

Objected to by counsel for defendant, on the ground that it calls for a conclusion.

The Court: The objection is well taken.

Col. Dyer: Q. I will get you to state whether that paper was referred to Col. Dice? A. It was.

Q. When was it referred to Col. Dice? A. On the 7th of November, 1902.

Q. Will you explain when a case, under your rules and regulations, is concluded, when it is ended? A. As far as my office is concerned, it is concluded when the investigation is finished and final report made and proper disposition made of it by my force.

Q. When properly disposed of in your office? A. Yes sir.

Q. And not until then? A. Not until then.

Q. Now what is the course of proceeding in the event that an investigation for fraud is had, and it comes back to you from the Post Office Inspector in charge here, say Col. Dice, recommending that an order be issued by the Post Master General, known as a fraud order, what course does it take after it reaches your office then? A. It would be referred to the office of the assistant Attorney General of the Post Office Department for his consideration and action.

Q. Under whose immediate direction are you?

The Court: After he investigates he reports his con-
106 clusions to the Post Master General for his action?

A. Yes sir, in case he considers a fraud order not warranted, he probably would not submit it to the Post Master General at all.

Col. Dyer: Q. In case he did, what then? A. Then he would submit it to the Post Master General.

Q. Who is your immediate superior? A. The Fourth Assistant Post Master General.

Q. I have offered and read in evidence here certain sections and provisions for the government of the Post Office department known as "Rules and Regulations": I will get you to state whether there are any other rules and regulations not embodied in this book that are issued to Post Office Inspectors? A. There are.

Q. Under section 45 at page 47 of the postal laws and regulations, is this section that I have read in evidence before; special regulations for the instruction and government of inspectors are prescribed in the book, instructions which are confidentially furnished each Inspector. Obedience and conformity to these regulations, and a strict observance of their secrecy are enjoined: I will get you to state whether you have in your possession such regulations issued in pursuance of that section now? A. I have.

Q. Will you produce them?

Judge Krum: I submit these are not competent.

Col. Dyer: Are these instructions contained in this book I hold in my hand, delivered to each Post Office Inspector? A. They are.

Q. And I will ask you whether these instructions are signed and given to them by the Post Master General? A.
107 They are signed by the Post Master General and referred to me to be given to the Post Office Inspector.

you

Q. To be given through to the different inspectors? A. Yes.

Q. Were these instruction- in existence in 1902 and 1903? A. They were.

Q. Do these instructions contain directions as to what shall be done in the examination of fraud cases? A. Yes sir.

Q. I show you this book, and ask you whether this book and these instructions were promulgated by Charles Emory Smith Post Master General of the United States? A. They were.

Q. I will ask you whether Sections 49 and 50 of these instructions—whether that is the course pointed out by that, to

be followed by these inspectors; whether that was part and parcel of the way of making examination of these charges of fraud through the Post Office department of the United States? A. Yes sir.

Col. Dyer: I offer Sections 49 and 50 of these Postal Rules and Regulations.

Q. In conducting cases of this kind, as was done in this case, each case is given a number? A. Yes sir.

Q. And by that number complaints existing, and complaints that might follow the first are given the same number, given the same jacket, and form a part of the same case; is that true? A. Yes sir, that is right.

Q. Any subsequent complaints made against this Rialto Grain and Securities Company, subsequent to the time the jacket was made in the Hout and Evans matter, would be numbered the same as that, and come in that case? A. Yes, they would be, if the regular course was followed.

108 Q. Under the Rules and Regulations of the Department, and the course of business followed there, at any time you had authority to direct Col. Dice to discontinue the examination of the case, and return it to you; is that true? A. It is.

Q. You had absolute control of this matter while it was pending in your department? A. Yes sir.

Q. And the fact that it was sent to Col. Dice for examination from the department was in accordance with the rules and regulations of the department for the purpose of better enabling the Post Office Department to make the examination?

Objected to by counsel for defendant, as not proper.

The Court: That is rather leading: The objection is sustained. He may state the purpose, if you want.

Col. Dyer: Q. You may state when these complaints were made at Washington to the Post Office department, why was it referred to the Post Office Inspector here in charge instead of being examined by you at Washington?

Judge Krum: I submit that is not for this witness to determine.

The Court: I think that is a matter which is determined by the rules and regulations and the procedure of this department. According to the testimony and the regulations, it is sent out here for investigation, and returned to the department for action upon it. There is no use sifting it through this witness.

Col. Dyer: I offer in evidence section 49 and 50 of this book Postal Rules and Regulations, which the witness says, is part and parcel of the department.

Mr. Lehmann: We object to that. Everything that can possibly be competent is already offered—that is, what was done. These sections are something in the way of advice, instruction on law, some instructions as to how to conduct the secret service, all of which are not relevant here at all. The evidence as to what was done in this particular case, has already been received.

Objection sustained, to the reading of sections 49 and all that part of section 50 except the last paragraph of it, because it appears to be but a resume of the law on the subject, and general instructions to Post Office inspectors. But this last clause has special relation to what they should do in connection with matters that are perhaps germaine to the inquiry before the Court.

Mr. Lehmann: I wish to add to the objection we made, that the instructions, being secret and not known to the defendant, could not possibly connect him in respect to it.

The Court: There is nothing in here which bears upon the case except the precedure of the Department whether a fraud order is proper or necessary, and that is all I allow here in connection with this trial.

The District Attorney here reads the last twelve lines of Section 50 of the postal Laws and Regulations, as follows:

"The authority to prohibit the delivery of mail matter or payment of monty orders, is conferred only on the Post Master General and must never be assumed by an Inspector. In cases where it may be necessary that such action be immediately taken, the Inspector will communicate by wire with the Inspector in charge of his Division, who may advise the Department, stating briefly the reasons for the action desired, and a temporary order can then be issued by the Assistant Attorney General for the Post Office Department, through the Inspector, pending a consideration and hearing, looking to the issue of a formal fraud order".

Col. Dyer: I have not asked this witness to identify certain letters, as they have been already identified.

Judge Krum: There is no dispute about them.

The Court: There is no necessity for any further identification of those letters. There is no dispute about them, no question about them.

Ernest H. Kastor, a witness of lawful age, being duly produced, sworn and examined on the part of the United States, testifies as follows:

Direct Examination,

By Col. D. P. Dyer:

Q. Your name is Ernest H. Kastor? A. Yes.

Q. You live in St. Louis? A. I do.

Q. And your business? A. Secretary and Treasurer of the H. W. Kastor & Sons Advertising Company.

Q. Are you acquainted with the defendant, Senator J. R. Burton? A. Yes sir.

Q I will ask you to state, Mr. Kastor, whether in November, 1902, you went with the defendant to the Rialto Building in this City, in a carriage? A. I did, sometime along there.

Q. What time in the day was that? A. It was sometime near noon—I do not recollect the exact hour.

Q. When you went to the Rialto Building on the corner of Fourth and Olive Streets, did you see Major Hugh C. Dennis? A. Yes sir.

111 Q. Did you introduce him to Senator Burton? A. I don't think I did at that time. I think I introduced him to Mr. Harlan on that day.

Q. You introduced him to Mr. Harlan? A. Yes sir.

Q. At that time? A. Yes sir

Q Did you see Mr. Dennis that day? A. Yes sir

Q. Who introduced him to the Senator? A. I think it was my brother that introduced him.

Q. At the same time, on that same day? A. I think it was on that same day he introduced him.

Judge Krum: I think we can safely admit they became [acquainted.]

Q. (Col. Dyer resuming) who, in company with you and Senator Burton went down to the Rialto Building? A. My brother—who in company with?

Q. With you and Senator Burton? A. My brother.

Q. Which one? A. Ben—B. H.

Q. How long did you remain there at that time? A. Just a few moments. I don't recollect just how long, but it was a very short time.

Q. What was said there at that time by Dennis to Burton, or Harlan to Burton at that time? A. I think the Senator made the statement that he was obliged to take that Mid-day train to Chicago and it was only a few minutes to catch it, and there was very little said, except that Major Dennis said that his attorney would go along to Chicago with the Senator, and they would—

Q. By Judge Krum: Mr. Harlan, you mean? A. Yes sir, Mr. Harlan, and they would speak about the matters at that time.

Q. (Col. Dyer resuming) Speak about what matters. Did they say anything? A. Not at that time they did not.

112 Q. Had you previously gone to Dennis about the matter and spoken to him about seeing Senator Burton? A. I do not recollect I did. I think I spoke to Mr. Harlan. I don't recollect whether I spoke to Major Dennis about it or not.

Q. Mr. Harlan was attorney for the Rialto Grain & Securities Company? A. Yes sir.

Q. How long before the day you went there with Burton had you spoken to Mr. Harlan about Senator Burton? A. I do not recollect. I do not remember.

Q. How long altogether did you remain at the Rialto Building with Senator Burton and Major Dennis? A. We did not go into the building at all. We went in the carriage with the Senator, and it was just a few moments we staid there, and immediately drove to the train, if I recollect.—

Q. That is to say, not to get ahead of it, you did not go into the building, and the conversation that you allude to was had between Dennis, Harlan and Burton, on the sidewalk? A. Yes sir.

Q. While standing talking to the Senator in the carriage? A. Yes, sir.

Q. And after that conversation was over, who got into the carriage then to go to the depot? A. Mr. Harlan, Senator Burton, my brother and myself.

Q. After getting to the depot, how long before you left the depot to go to Chicago, how long before Senator Burton left? A. It was a very short time. We had very little time, as I recollect it.

Q. Who went with him, if anyone, to Chicago?

Judge Krum: Who is "him"?

Q. (Col. Dyer resuming) Who went in company
113 with the Senator to Chicago that day? A. Mr. Harlan and myself.

Q. You occupied the same car? A. Yes, sir.

Q. What time did you get to Chicago? A. I think it was in the neighborhood of 8 o'clock or thereabouts—8 or 9 o'clock —something of that kind.

Judge Krum: Morning or evening?

Q. (Col. Dyer resuming) In the evening you got there? A. Yes, sir, in the evening.

Q. You left here at noon? A. Yes, about noon.

Q. By the Court: What day of the month was that—what month—when? A. I do not recollect the day, but I think it was in November. It was sometime before the Holidays. I do not recollect the day.

Col. D. P. Dyer: We will locate the time.

Q. (Col. Dyer resuming) Can you state when you returned to St. Louis? A. We returned the next morning. That is, we left Chicago that same night.

Q. By Judge Krum: By "we" you mean whom? A. Mr. Harlan and myself.

Q. (Col. Dyer resuming) You parted with the Senator there? A. Yes sir, at Chicago.

Q. And you and Mr. Harlan together returned to St. Louis the next morning? A. Yes, sir.

Q. Now what was said, if anything, between Mr. Harlan and Senator Burton on the way to Chicago, about the employment of the Senator? A. Well, certain matters were taken up about the Senator—

Judge Krum: State all that was said, if you please, as near as you can recall, all of it? A. I have gone over this matter recently to clear my mind as much as I possibly could on the points in the matter, after I was subpoenaed as a wit-
114 ness, to recollect as much of it as I could:

Judge Krum: That is what we want to get, all you can recall of it?

A. As I recall the conversation, it was taken up about the Senator becoming counsel for the Rialto Grain & Securities Company—

The Court: You are requested to state what was said.

Q. (Col. Dyer resuming) What was said, and who said it, to Senator Burton, about him becoming counsel for the company? A. Why, Mr. Harlan spoke to him, about becoming counsel for the company, and the Senator asked him what should be done, or words to that effect, and as far as I can recollect at that time Mr. Harlan spoke about some legal matter coming up in regard to the old Brooks Brokerage Company, in which Mr. Brooks was connected at that time; and that maybe the Senator would be needed in that. And they also spoke about some literature that was being gotten up for the Rialto Grain & Securities Company, or was up, I don't recollect which, in the way of booklets; and stated that they would want him to go over that literature for the purpose of seeing if there was anything in it that was against the postal laws or regulations; and wanted him to act as counsel for the com-

pany. And if I recollect aright, something was mentioned about the Senator's name being placed on the literature as Chief Counsel.

Q. What was said about the money that was to be paid him, if anything? A. Well, the matter of the money was taken up and was satisfactorily arranged—

Q. i want to know what was said. I don't want to know whether it was satisfactorily arranged. I want to know what was said about it.

115 The Court: State what was said.

A. I think there was something stated about $2500 being paid to him.

Judge Krum: What is that.

A. About the Senator receiving $2500, and I think it was arranged to be paid at different periods. That is not so clear in my mind.

Q. Where was this conversation—was this conversation on the cars? A. Yes.

Q. In the conversation in reference to this compensation, after you got to Chicago, or was it all arranged before you got to Chicago? A. I think it was arranged in such a way that Mr. Harlan was to let the Senator hear from him.

Q. That is, was there anything said about him submitting the proposition of the employment and the terms of the employment to the Rialto Grain & Securities Company at St. Louis, and then to be heard from? A. I think there was, yes, sir.

Q. Now what was said about literature and booklets that were to be issued by this Rialto Grain & Securities Company in that conversation? What was Senator Burton to do about this literature? A. As I understood it, he was simply to look over the literature and give advice as to whether it was in accordance with the rules and regulations.

Q. That is to say, whether it was permissible to go through the mails? A. Yes sir.

Q. Was there anything said in that conversation about the Old Brooks Brokerage and Commission Company other [that] that company had gotten into trouble, and this company had been organized upon its own hook? A. Well, there was something said that the Senator might be called upon, and in the capacity of counsel, that there was [something] coming
116 on, I don't know whether there was an indictment at the time, or they feared an indictment, or something of that

kind; and it was arranged I think, that they were to telegraph the Senator, or inform him if they wanted him here in St. Louis.

Q. What was said about this literature? What was said further about it? Was there any literature shown to him at the time that had been originally issued by the Brooks Brokerage Company? Did you have some of that [lietrature] along and submit that to him? A. I did not, and I do not recollect whether there was any shown at the time or not.

Q. Well, what was said about—What further was said if anything, about what he was to do in reference to this literature? A. I do not recollect that there was very much further said. That has been [someting] ago, and I do not recollect the entire conversation.

Q. Have you stated as fully as you can all that occurred between here and Chicago in reference to this employment, and what occurred? A. I recollect that Senator Burton made a statement regarding that he could not act before the Departments.

Q. In what way, did he say? A. Well, there was different matters came up there about the Rialto Grain & Securities Company—and in fact I have personally spoken to the Senator before about them. We were at the time handling a great deal of advertising for these parties, and I told him that—

Q. You need not tell what you told him. I am talking about what Mr. Harlan told him.

Judge Krum: You mean you told the Senator this when Mr. Harlan was there, or you told him before that time? A. Before that time.

117 Q. (Col. Dyer resuming) I want to know all that was said between Mr. Harlan and Senator Burton on the way to Chicago, and after they got to Chicago, about his employment? A. Well, I have told about all I can recollect. I cannot remember very distinctly anything further.

Q. You do not know anything further that was said beyond that his duties were to examine the literature and decide whether it was mailable or unmailable matter, and allusion to the old Brooks Brokerage Company: Anything further than that? A. Well, that he should act as Chief Counsel for the concern, and that his name should appear as Chief Counsel, and that if anything came up in legal matters in St. Louis, they were to wire or communicate with him.

Q. Do you know, as a matter of fact, whether his name was afterwards published on their literature that went out, as Chief Counsel?

Judge Krum: We will admit it was.

Q. (Col. Dyer resuming) Did you print it? A. No, sir.

Q. You, I suppose, have talked about this matter some recently, haven't you? A. Yes sir.

Q. And you have also talked with Senator Burton about this matter? A. Yes, sir, I conferred with him about it.

Q. How many times have you conferred with him since this indictment was found in reference to this matter? A. I have conferred with him since I was subpoenaed as a witness, some two or three times, I think.

Q. Where did you meet him? A. I met him at the Southern Hotel, and I met him in our office.

Q. And you think as many as three times since you were subpoenaed? A. I think so. I am a good, personal friend of the Senator's.

Q. You have conferred with him in reference—did you talk over what had transpired on the train? A. Yes.

118 sir.

Q. And in each conversation, did you go over what had transpired on the train? A. Not particularly. I was the one that brought up the subject to the Senator. I told him it was not clear in my mind and I supposed I would be asked these questions, in order to clear my mind as far as possible in the matter.

Q. What was said, if anything, by Mr. Harlan, about trouble with the Department, to Senator Burton? A. I do not recollect that anything was said at the time.

Q. What was said, if anything, about the necessity of examining this literature to see whether it was mailable or unmailable matter. What was said about that? A. Well, Mr. Harlan wanted—they wanted to keep themselves out of any trouble. The Brooks Brokerage Company had got in trouble, and they wanted to guard as near as possible, as I could understand, from a repetition.

Q. Of the trouble they had had with the Brooks Brokerage Company? A. Yes, sir.

Q. And then it was that suggestion was made as to the examination of this literature? A. Yes, sir.

Q. Was there anything said in that conversation about submitting to the defendant, Senator Burton, the literature that might be made up to be sent out to people? A. Yes, sir.

Q. That literature was to be submitted to him? A. There was reference made that they would submit literature and wanted him to go over literature when they would submit it and give his opinion on it, as far as I can recollect.

Q. Was there anything said in that conversation, to your knowledge, to submit this literature to the proper Post Office officials to see whether it could properly go through the mails or not? A. I think there was some such thing said.

119 Q. By whom was that said, Mr. Harlan or Senator Burton? A. I think by Mr. Harlan. I will state that I do not recollect that clear enough to state absolutetly on my oath.

Cross-Examination

By Judge Krum.

Q. Mr. Kastor, your recollection as to what occurred between Senator Burton and Mr. Harlan is not distinct as to all of the details of the matter? A. No, sir; not as to all the details of the matter.

Q. Since this case has been set down for trial you have had several conversations with Senator Burton? A. Yes, sir.

Q. In which you have endeavored to recall all—that is, the details of the conversation between Mr. Harlan and himself, haven't you? A. Yes, sir.

Q. You have also had some talks with me in the same direction, haven't you? A. Yes, sir.

Q. Now you have indicated that in some way the sum of $2500 was spoken of: Have you any distinct recollection in regard to that matter, or, do you just recall it in a general way? Are you able to give us, or have you at any time since that conversation been able, to recall the details with reference to this matter of $2500, so you can intelligently explain to the jury what was stated in that respect? Was the sum of $2500 indicated, which was to be paid to Senator Burton as a specific sum, or was there anything indicated on the part of Mr. Harlan as to payment to be made to the Senator which would amount to $2500, or what was said? A. Well, I think the sum of $2500 was indicated, but it was to be paid at certain times.

Q. Let me recall to you if I can what occurred: Of course matter of compensation was spoken of? A. Yes, sir.

120 Q. No doubt about that? A. Yes, sir.

Q. Now did not Mr. Harlan suggest the amount of compensation, and didn't he suggest too to Senator Burton that he thought $500 a month would be proper compensation for him in reference to the matters in regard to which he was employed or to be employed—or what is your recollection upon that subject? A. I believe there was some thing of that kind said by Mr. Harlan, and if I recollect right, Senator Burton then spoke of $2500 as the amount to reach that sum, and that he should be paid in monthly installments, if I recollect right.

Q. Can you recollect this: That after Mr. Harlan indicated this amount of compensation, or method of compensation, that compensation the company would agree to, Senator Burton agreeing to that himself, indicated that the sum agreed on to be paid monthly, should be paid to him in advance, and that as it would not be fair in his judgment to cut him off with one month's payment, they should contemplate a continuance of the

arrangement sufficiently long at least to cover $2500: Do you recall anything of that kind? A. I recall, but I do not recall it just that way, but I recall the statement made was, that it should reach $2500 and that it should be paid in monthly installments. That he should receive so much a month, but the amount should not be less than—

Q. Not less than $2500? A. Yes, not less than $2500.

Q. And that he should be paid in monthly installments? A. Yes sir.

Q. Now the employment, as I understand you, was in the first place as General Counsel, for the Rialto Grain & Securities Company? A. Yes, sir.

Q. And that company, as you understood, didn't you,
121 Major Dennis was the principal stockholder of? A. Yes, sir.

Q. And substantial owner of it? A. Yes, sir.

Q. So that Mr. Harlan's proposition was, that Senator Burton should become the General Counsel of the Company, that this literature which the company purposed to issue from time to time, should be submitted to Senator Burton for his approval or criticism? A. Yes, sir.

Q. And that Senator Burton should appear for Major Dennis here in St. Louis in this Court, or in the State Court, if Major Dennis was indicted by reason of the transactions of The Brooks Brokerage Company: Wasn't that the arrangement? A. Yes sir.

Q. Now have you any definite recollection as to what Senator Burton said in regard to matters before any of the departments, or matters before the Post Office Department: Let us have your best recollection you can afford us? A. I recollect there was a statement made, but I don't know just exactly the language of it. I was not very deeply interested in it—that the Senator stated something, that he could not act in a case before the Department, or words to that effect. I don't recollect exactly.

Q. Are you able to indicate to the jury how that happened to be mentioned by the Senator? Can you indicate in what connection that indication was given by him? A. It was in the connection that he was to be General Counsel. As near as I can recollect, at that time, that he could act as General Counsel, except——

Q. That is, he was not to appear in the matters in the Departments: He indicated that, didn't he? A. Yes, sir.

Q. He was willing to accept employment as General Counsel of the Company? A. Yes, sir.

122 Q. With that limitation? A. Yes, sir.

Q. That his employment should exclude the idea of his appearing before the Departments? A. Yes, sir.

Q. That is substantially it? A. Substantially, yes, sir.

Q. With reference to the Brooks Brokerage Company, you were given to understand, weren't you in the course of that conversation between Messrs. Harlan and Burton, that Major Dennis had been interested in the Brooks Brokerage Company as its principal owner? You were given to understand that? A. Yes, sir, I knew that.

Q. And that Brooks and Dennis had become involved by reason of the operations of that company? A. Yes, sir.

Q. And that, Mr. Harlan indicated, didn't he, to Senator Burton, that there was room to believe Major Dennis would be indicted, and it was accordingly arranged that the employment of Senator Burton should also cover the criminal cases which might be brought against Dennis? That is a fact, isn't it? A. Yes, sir.

Q. Down to the time when you first, or your brother, introduced Senator Burton to Major Dennis, are you aware of any knowledge on the part of Senator Burton either in regard to Major Dennis or the Rialto Grain & Securities Company? A. No, sir; none.

Q. So far as you know, it is a fact, isn't it, that down to the day when Senator Burton and Mr. Harlan and yourself went to Chicago, Senator Burton was in complete ignorance of any of the affairs of the Rialto Grain & Securities Company of the Brooks Brokerage Company or Major Dennis himself? A. To the best of my belief he was, yes.

Q. Whatever information was afforded Senator Burton in regard to any of these matters, so far as you know, he
123 acquired that day: That is a fact, isn't it? A. So far as I know, it is, yes.

Q. It was practically by your suggestion that Senator Burton was brought into this employment? A. Yes, sir.

Q. Are you able to recall, Mr. Kastor, anything said by Mr. Harlan with reference to the line of business which the Rialto Grain & Securities Company purposed to follow? A. I recollect stating to myself to the Senator something about it.

Q. Let me see what I can do to refresh your memory: Do you remember that Mr. Harlan indicated to the Senator that the company purposed to deal in grain and other commodities, and stocks? A. Yes, sir.

Q. That it was a sort of a hobby on the part of Major Dennis to have as one of the leading features of the business of this company the placing of securities throughout the country? A. Yes, sir.

Q. You recall anything of that kind? A. I recall speaking to the Senator about that myself.

Q. From whom had you—

Col. Dyer: Are you recalling any conversation between him and Major Dennis?

Q. (Judge Krum resuming) Do I understand you to say that you had indicated to Senator Burton what the business of the company would probably be, or what they had in mind? A. Yes.

Q. Was this before you had introduced him to Mr. Harlan? A. I think it was on that same day that I spoke to him.

Q. Before or after they had met? Was it on the run up to Chicago? A. I think it was.

Q. Wasn't that feature discussed at considerable length between Mr. Harlan and the Senator—this feature of the placing of securities?

124 At this point recess was taken until 2 p. m.

After recess the following proceedings were had.

Q. Previous question read to the witness. What is your recollection as to that? A. The feature of placing securities by the Rialto Grain & Securities Company?

Q. Was that discussed between Mr. Harlan and Senator Burton? A. I recollect speaking to him about it. I do not recollect so much—

The Court: Speak louder.

A. (continued) I recollect speaking personally to the Senator about the placing of securities, etc.

Q. You do not recall whether Senator Burton or Mr. Harlan spoke of that? A. I do not recall distinctly whether they spoke of that.

Redirect Examination

By Col. D. P. Dyer:

Q. Where did you first know Senator Burton? A. I do not just recollect. I believe it was in our office I first met him, I do not just recollect.

Q. Had you any interest, directly or indirectly, in this Rialto Grain & Securities Company? A. No, sir, except that I was placing their advertising.

Q. You were placing their advertising? A. Yes, sir.

Q. That is, their advertisements put in the papers? A. Yes, sir.

Q. Did you have anything to do with printing their booklets? A. No sir.

Q. It was only in newspapers. In how many newspapers in the country did you place their advertisements? A. Oh, a good many, quite a number; pretty well throughout the United States.

Q. All through the United States? A. Yes, sir.

125 Q. Of their advertisements? A. Yes, sir.

Q. Did you submit those advertisements to Senator Burton? A. No, sir.

Q. Did you ask him anything about those advertisements? A. I think not. They were O.K'd by the company, the advertisements were, by the Rialto Grain & Securities Company.

Q. And this Rialto Grain & Securities Company was paying you for putting out those advertisements throughout the country? A. No, sir, we represented the newspapers. We get our money from the newspapers.

Q. That is to say, the Rialto Grain & Securities Company would pay the newspapers a certain amount— A. No, sir; we did the collecting. We do the collecting for the newspapers, but we receive a commission from the newspapers.

Q. And when you went to them, went to this Rialto Grain & Securities Company and took Senator Burton there, you supposed from your knowledge of Senator Burton that if they were in any trouble with the Post Office Department, he would be a good man to have. Didn't you think so? A. I first took the Senator there more out of friendship to Senator Burton, as he had given our firm quite a litle assistance in the way of giving us letters, etc., where we had secured accounts. He had assisted us on several occasions to secure accounts, and when this matter came up I spoke to them of Senator Burton and thought he would be a mighty good man.

Q. Didn't you say in that conversation, or did you say, that Senator Burton's knowledge gained through the Weltmer case at Nevada, Missouri, would be of service to them? A. I don't know but what I did make that remark.

Q. Didn't you tell them that Senator Burton represented Weltmer before the Post-Office Department and that

126 fraud orders were issued by the Post Office Department against this Weltmer Company?

Judge Krum: We object to that. In point of fact this all occurred before Senator Burton was a senator.

Mr. Lehmann: There is no pretense, that that was when the Senator was present.

Judge Krum: It has nothing to do with this matter.

The Court: Of course that is an immaterial issue and not to be tried, but with the view of calling his attention concerning services to be rendered in the Post Office Department, the witness' atttention might be called to that conversation, with the view of refreshing his recollection, and that is all. The question of that other matter is not involved.

Judge Krum: We do not understand this to be directed to the conversation between Mr. Harlan and this witness and Senator Burton.

The Court: Let me understand that: Is this directed to the interview which you claim was had between Mr. Harlan, this witness and Senator Burton, as to what occurred at that time?

Col. Dyer: Yes, sir; and part of the same transaction. That it was that reason why he urged the employment of this man.

The Court: The reason he gave to the Rialto Grain & Securities Company? This witness' conversation with the officers of the Rialto Grain & Securities Company is not relevant unless Senator Burton was present.

127 Q. (Col. D. P. Dyer resuming) Was there any conversation between Mr. Harlan, Senator Burton and yourself, between here and Chicago in reference to the Weltmer case? A. I do not recollect any.

Q. Was there anything said in that conversation about the services rendered by Burton in the Weltmer case? A. I do not recollect that there was. I do not remember of any.

Q. Was there anything said by you in your own office before going to the Rialto Grain & Securities Company that day, about his knowledge of the Post Office Department by reason of his connection with the Weltmer case?

Judge Krum: Said to whom, Burton?

A. I think not: I do not recollect any.

Q. Was there ever any conversation had between you and Senator Burton with reference to his knowledge of the proceedings before the Post Office Department in the Weltmer case?

Judge Krum: We submit that is wholly immaterial anyway.

The Court: I think not. I think that is relevant to the issue.

A. I do not recollect anything. I remember something stated about the case between—I do not recollect any conversation of that kind, about the Post Office Department. I recollect a conversation when it was before the Supreme Court, the case

Q. Had you any conversation—before asking you that question, did you know as a matter of fact that the Weltmer Company had had a controversy with the Post Office Department?

Objected to as immaterial.

The Court: You may ask it preliminarily. I don't know what it may lead to.

A. Yes.

128 Q. And did you say to Senator Burton or to anyone in his presence, that his knowledge gained by his connection with the Weltmer case would be of advantage to this company?

Objected to by counsel for defendant as not competent.

The Court: I think it is. The objection is overruled.

A. I think I did.

Q. Weltmer was the person who ran what was known as a Magnetic Healing Institute at Nevada, Missouri?

Counsel for defendant object to what he was, or who he was, or anything about him.

The Court: I will sustain the objection about who he was.

Judge Krum: It has nothing to do with this case.

The Court: As far as it goes, it did; but this last has not, because that involves a subject of inquiry.

Q. (Col. Dyer resuming) When, after your return from Chicago with Mr. Harlan, in November, did you next see Senator Burton?

Judge Krum: We object to the inquiry, because it does not grow out of anything inquired of this witness in cross-examination. If material at all it is a matter in chief and should have been inquired of in the first instance by the Government.

The Court: I think you are right in the main. I require you to direct the attention of the witness specifically to any matter inquired of in cross-examination. Direct his attention to it, and I will see whether it is proper rebuttal.

Q. (Col. Dyer resuming) I will ask you this ques-
129 tion: You knew, at the time you recommended Senator Burton to the Rialto Grain and Securities Company, that the Brooks Brokerage and Commission Company, had had trouble before the Post Office Department?

Objected to as not competent.

Objection overruled.

To which ruling the defendant, by his counsel, then and there duly excepted.

A. I knew that they were in trouble, yes.

The Court: Answer the question. Did you know they had trouble before the Post Office Department?

A. I do not recollect. I think he was indicted for some cause or other, but whether it was for that purpose, I do not recollect.

Col. Dyer: Under a stipulation I have here, I will read a letter of November 18, 1902, being a letter from Mr. Harlan to Senator Burton.

Judge Krum: There is no objection to that letter.

(Letter from Mr. Harlan to J. R. Burton, dated November, 18th, 1902, is here read)

November 18, 1902.

Hon. J. R. Burton,
Senate Chamber,
Washington, D. C.

My dear Sir: Mr. Kastor and I arrived safely and on time this A. M. I found myself confronted with a number of engagements, which, together with Major Dennis' condition, preventing me from wiring you as early an hour as I expected. However, I hope you received my message to the effect that this company accepts your terms to act as counsel at a salary of $500.00 per month, said service to begin immediately; that is, of this date, November 18th, 1902.

I have been unable to get any definite information of the present proceedings before the Federal Grand Jury. You will recall that these proceedings grow out of the business conducted under the name of the Brooks Brokerage & Com-
130 mission Company, a business organized about the first of February of this year, by a man named C. H. Brooks. Brooks run the business to about the first of June, when he sold his stock to our client, Major H. C. Dennis, Major Dennis was then as he is now, general agent of the Hartford Life Insurance Company, and continued to give his attention to the life insurance business, transferring the management of the brokerage business to one E. C. Waldon, who had been Secretary of the Company under Mr. Brooks' management. Mr. Waldon had charge of all the details. About the 27th of July, Mr. Brooks, who was then in California, wired Major Dennis, to the effect that he would take a half interest in the business, back it with a credit of $50,000.00, and add new features. Such was the substance of the telegram. I am unable to give the exact wording at the present time, because it, as well as other telegrams that passed at that time, is in the hands of the Post Office Inspectors of this District. To the message of Brooks, Major Dennis answered that he could not accept the offer, as he had made other arrangements. Brooks thereupon wired to Waldon, who was still acting as Secretary of the Brooks Brokerage & Commission Company, asking Wal-

dron to join with him, Brooks, in a fight on Dennis, for the purpose of "busting" the concern. Brooks immediately left California, arriving here a few days later, and bringing with him a lawyer from California, and started a collection agency under the name of the "Guarantee Collection Agency", using the name of no individual, but sent out a false and libelous circular, charging the Brooks Brokerage & Commission Company with doing a fraudulent business, violating the State and Postal laws, etc., and soliciting from the former customers of the Brooks Brokerage & Commission Company (the names of said customers having been obtained by Waldon), and proposing in said circular to take claims against said Brokerage Company on the basis of 10%, agreeing to pay all court costs and other expenses. They succeeded in getting in a large number of claims, possibly one hundred and fifty, and filed about fifteen suits on said claims. At the same time, Brooks took the matter up with the Postal authorities, presenting to them some of the correspondence that he had collected through his collection agency, and by misrepresenting Dennis, brought about an

Hon. J. R. B. -2-

investigation by the Post Office Inspectors. This examination proved to be a little more than Mr. Brooks expected; every record, every letter or other scrap of evidence that could be produced was turned over to the Inspectors, and, though Mr. Brooks had taken with him his record books, and no doubt supposed that he had destroyed all evidence that might in any manner incriminate him, we succeeded in finding one letter-copy-book and two ordinary letter-files full of letters, all of which contained some damaging evidence against Mr. Brooks and it now looks as though Mr. Brooks would be indicted by the Federal Grand Jury now in session, on a charge of a fraudulent use of the mails. The Post Office Inspectors realize
131 that Major Dennis stumbled into the thing inadvertantly or at least innocently, and do not hesitate to say so. They fear, however, to assume any responsibility, and we have directed our labors to avoid Major Dennis' name being mentioned in connection with that of Brooks in an indictment, should one be found. It is well recognized, that Mr. Brooks was actuated in this matter in a spirit of revenge, and later sought to "hold up" Dennis, by demanding $25000.00, as a condition not to prosecute in the Federal Courts.

The above facts, which constitute a mere outline of the present situation, will, I believe, be sufficient to show Major Dennis's present danger as well as his innocence on any wrong doing in the matter. That he is innocent, I know from my own knowledge; and I know also, as a man, that no one would do

more to prevent an intentional wrong than Major Dennis. Up to the present time, no indictment has been found. The Federal Grand Jury will probably be discharged this week. I do not know what reports have been sent into the Post Office Department at Washington, nor am I prepared to say that the Government intends to make a case against Major Dennis; but if you can find it convenient to inquire of these facts at the Department, you may be able to perform for us a great service at this time. Should any action be taken here by the Grand Jury, I will wire you at once.

Yours very truly,

THOS. B. HARLAN.

Col. Dyer: To that letter there came an answer, which I offer to read.

Judge Krum: We object to that because evidence has not yet been afforded which can render the letter competent as an admission on the part of the defendant in any regard. In other words, you cannot prove the corpus Delictu by the admission of the defendant.

The objection is overruled.

To which ruling the defendant then and there, by his counsel, duly excepted.

The Court: What is the date of that letter?

Col. Dyer: November 20, 1902.

The Court: That is in answer to the letter of Harlan of the 18th?

Col. Dyer: Yes, sir.

Judge Krum: If I may be permitted, the Court will
132 observe that the charge here is confined within very narrow grounds. That is, the receipt of compensation for a service rendered. There is not a word of testimony here as to any services rendered or as to any compensation received for a service rendered. Now it is proposed in the absence of any testimony on that score, to read what can be regarded only as an admission by the defendant. I respectfully submit that violates every rule applicable to such a situation under the law of evidence.

The Court: I think not. Here is a statement made by the witness with regard to the matter which is under inquiry, and every step of the case cannot be proved by the first witness or the first letter.

Judge Krum: It is not a mere objection to the order of proof.

The Court: What is your objection? That his admissions are not competent?

Judge Krum: At this stage his admissions are not competent.

The objection is overruled.

To which ruling the defendant then and there by his counsel duly excepted.

Counsel for the Government here reads the letter dated November 20, 1902, addressed to Thomas B. Harlan.

United States Senate,
Committee on Forest Reservations and the
Protection of Game.

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Nov. 20, 1902.

Mr. Thomas B. Harlan,
Rialto Grain & Securities Company,
St. Louis, Mo.

Dear Sir: Your favor of November 18th received. I called at the department this morning and find that there are two complaints lodged against your company. One by Bella Evans and the other by Mrs. K. C. Hont, both of Albany, New York. These complaints were sent out from the main office here for investigation on the 7th of November, and doubtless the inspector there has called your attention to them before now. If he has not, he will do so very soon.

I should like to be advised what there is in these complaints. Without knowing anything about the merits of the same, I would advise that all complaints receive special attention by your company, and if possible satisfy the complaints, especially should this be your motto until after this Brooks matter is entirely out of the way.

I have arranged with the department to be advised in case any complaints are made against your company, and have arranged for a hearing if any hearing should become necessary. I have assured the department that it is the (T. B. H. 2) purpose of your company to comply strictly with the law, and that it is your desire to remain at all times in perfect harmony with the department.

No action of any kind will be taken against you without my first being notified, and every opportunity for a full ex-

134 planation or hearing will be had.

In return, if agreeable, you may make remittance for my first month's pay.

Faithfully yours,

J. R. BURTON.

Judge Krum: I would like to have Mr. Harlan's reply to that letter read.

Col. Dyer: I will read that in its order as I take them up one after the other. I expect to introduce them all.

Col. Dyer: I offer now in evidence check of H. C. Dennis, President of the Rialto Grain & Securities Company, dated November 22, 1902, to J. R. Burton.

Judge Krum: Objected to if the Court please, on the ground that it is not competent for these reasons: It has been shown on the part of the Government that the contract of employment was made between the Rialto Grain & Securities Company and the defendant, under which he was employed by the company as its General Counsel at a compensation of $500 per month to be paid of course monthly. It has been shown on the part of the Government that this check was mailed in St. Louis to the defendant at Washington, D. C., as the first payment under that contract, the Government having shown that the check was mailed here at St. Louis to the defendant at Washington, D. C., as the first payment under that contract, it is to be presumed, in the absence of any testimony to the contrary, that the defendant received the check at the place to which it was sent by the mail. That being so, then insofar as the check evidences
135 a receipt of compensation by the defendant for any services rendered by him, the receipt of that compensation was had at the place where the defendant received the check—that is, Washington, in the District of Columbia, and not St. Louis, in the Eastern District of Missouri, and the gist of the evidence being the receipt of the compensation, of course there is no jurisdiction of this court to enter any counts of the indictment to which this check may be applicable; and this check as a matter of testimony is not competent, among other things, for the reason last indicated.

Now, the Government has alleged a series of services—that is, they have here a series of counts, each of which is based upon service. It does not appear from the language of the counts, except in a general way, that the service was the same. It is to be assumed in the absence of averments to that effect, that the service covered by each count was separate and distinct, or covered in any count was separate and [distince] from the service covered by the other count. The Court therefore, upon the theory of the Government, has this question presented: Where was the receipt of this compensation on the part of the defendant—conceding now that it was received—for the services rendered as laid in the indictment. Where was the compensation received? In the City of Washington, District of Columbia, or in the City of St. Louis, Eastern District of Missouri? We say the evidence shows conclu-
136 sively that the receipt of the compensation was in Washington, which independent of any other consideration in the case, operates to exclude this testimony. But, in addition to that, it seems to me there can be no successful contention that

the Government itself has proven that this check was never paid to Senator Burton, or never received by Senator Burton, as compensation for any service rendered in the Post Office Department, of the description laid in the Indictment, or any other service; that it was paid to him and received by him, as the evidence on the part of the Government shows, by reason of the contract that had been made with him as General Counsel of the Rialto Grain & Securities Company.

Now the Court will not have failed to have observed the provisions of the Statute. Your Honor has already demonstrated what the statutes signify, what the gist of the offense is, the receipt of the compensation. Your Honor has ignored all details of averment in this indictment, of which counsel for the defendant sought to take advantage, on the ground that those are practically irrelevant, that the point in controversy under each count is, Did the defendant receive a sum of money, as laid in some counts, or a check, as laid in others, as compensation for the services rendered of the description as laid in the counts. That is the controversy. Not was there a general employment as counsel. Not was there any employment. But did the defendant render the service which is laid in the count, and did he receive as compensation for that service the amount
137 of money or the check which is described in the count.

Now here they go on and show, according to all the evidence adduced, that this check never was sent to the defendant, and, therefore, it could not have been received by him as compensation for any service he rendered in the Post Office Department; but was sent to him and received by him, by reason of the provisions, of the contract which had been made between himself and the company, and under which, so far as this case has proceeded, he would be entitled to these monthly payments if he did or did not do anything under the contract.

Mr. Lehmann: We have the allegation of the indictment in double form. The allegation of the indictment is that the check was received by the defendant in the city of St. Louis, not stopping with that, it proceeds to state, in terms, that the money upon that check was paid to the defendant in the city of St. Louis. Now, we have enough indicated here plainly by the Government, that this was not the fact; that the check was mailed from the city of St. Louis to the city of Washington, was received by the defendant there, and the money received by him on account of the check in that city. Now, they cannot contravene the allegations of the indictment itself in that way. They have stated the fact that the check was paid here, and that the check was received here; both averments.

I submit that a check shown to have been received in the city of Washington, and shown to have been paid to the defendant there, not only does not support, but directly contradicts those allegations of the indictment.

Col. Dyer: That the question may be more definitely stated, I propose to read the stipulation which these gentlemen
138 have made in reference to this matter, so that the questions of law that are sought to be presented by this objection may be fully made and disposed of now. And to avoid any question between counsel and myself as to where this check was paid and where it was delivered, and where it was eventually paid, there can be no controversy between us, because the fact has been stipulated as to the truth of it.

Judge Krum: There is no controversy about it.

Col. Dyer: I desire to have this as part of the record? (reading from stipulation as follows) "It is further stipulated and agreed that the checks mentioned in counts 6, 7, 8, and 9, of Indictment 4192, were duly received by the defendant, in Washington, D. C. and by him endorsed and deposited with the Riggs National Bank, of Washington, D. C., and were afterwards duly paid by the Commonwealth Trust Company, at St. Louis, Missouri, and that said checks and all of the endorsements thereon, may be introduced and used in evidence in the trial of said cause."

That being true, I desire to call counsels' attention as well as that of the Court, to Section 731 of the Revised Statutes of the United States:

"When any offense against the United States is begun in one judicial circuit and completed in another, it shall be deemed to have been committed in either, and may be dealt with, inquired of, tried, determined and punished in either district, in the same manner as if it had been actually and wholly committed therein."

Now, this stipulation that I have read here shows that this check was written in St. Louis, sent to Washington, taken by the defendant at Washington, and deposited at the Riggs National Bank at Washington, and endorsed by him when
139 so deposited, and finally reached the Commonwealth company at St. Louis, and paid at St. Louis.

Upon the question of law that is raised by counsel as to whether or not the case must be tried in Washington, if there be a case, because this court would not have jurisdiction if the [offence] of receiving was committed wholly in the District of Columbia, and where the offense was committed, my associate

and assistant, who has with some care and labor examined the law upon this subject, and prepared a brief that he will now present to the court.

The Court: The last point made by counsel for the defendant, as to whether there was any evidence of defendant's receiving any sum of money for services rendered before the Department, necessarily involves a consideration of the evidence itself. Now, under the law this defendant is not guilty for making a contract to do anything. This defendant is guilty if he receives money, receives any compensation for services rendered before the department in a matter in which the United States is interested in any way. So, that, whatever be the true construction of the original contract entered into between the defendant in this case and the Rialto Grain and Securities company, the question is still open whether, as a matter of fact, he received money from the Rialto Grain and Securities company for services rendered before the department by him.

There has been so much comment on the evidence itself that it is proper for the court to say that the testimony of the witness who took the stand here first with respect to this matter leaves the matter as to what the services were to be in much doubt. There was no definite statement about it, in the memory of the court. He said that the accused was to receive $2500 as counsel; he said his services were to be as chief counsel. But he tells
140 counsel in the examination that a part of his duty was to see that the literature which should be sent out by the Rialto Grain and Securities Company should not violate the laws of the Post Office Department. Moreover, when the contract is finally executed in the shape of a letter written by Harlan in accordance with the interview which he had with the officers of the Rialto Grain & Securities Company on the 18th there is no limitation as to what his services should be. He is there said to be the counsel. He is to receive the $2500 in monthly allowances for services as counsel.

Taking these features of the evidence into consideration, it is certainly true that it cannot now be said that he was to perform no service under this contract for the Rialto Grain & Securities Company before the department. It certainly cannot be said that the contract did not require him to make it. On the contrary, there is evidence to be left to the jury not only of importance in itself, but of reasonable inferences that may be drawn from it, from which the jury may even be able to find that the contract contemplated this. And certainly it would not do for the court, in passing upon the admissibility of the evidence, to say that that would not be a fair and rea-

sonable inference; neither do I intend to intimate that it would be, but simply that it is a matter for the jury to pass upon what the original contract was between the parties: whether it contemplated in terms actual work in the post office department; or whether, by reason of the fact which was said by one of the witnesses to have occurred, that he did not undertake to perform any service in the Post Office department, the contract was made not to cover services before the department, but with the actual intention of rendering them. All this must be left to the jury.

141 But as I intimated at the start, the gist of this action, as counsel have well said, is the receipt of money for services rendered. It is entirely immaterial whether those services were rendered in [prusuance] of the terms of the contract or not. A contract, if one is proved in this case, will be evidence as to what the services were; but it is not conclusive evidence as to what the services were, and cannot be. The gist of the action is the receiving of money or compensation for services rendered.

Now, is there any evidence that he did receive any? Take up this matter as argued by counsel. Is there any evidence that he received money. He took a check. Now, for the purposes of argument, is there any evidence of the receipt of money in consideration of services? Two suggestions are made with reference to this. One was that the fact of his going to the Post Office department and making inquiries and getting information as specified and mentioned in the letter of November 20th, written by Burton to Harlan, were not to be dignified as services, were not to be treated or regarded as services to the value of $500. Well, why not? It depends upon what the services were and it depends upon what the parties paid for the services. I have seen, as counsel have seen many a time in the course of their experience at this bar and others, where some distinguished counsel takes his place at the counsel table and sits probably for the purpose of his influence upon the Court or jury in a matter of the determination of a question. And has not he performed services? Isn't it a service if a Senator of the United States, occupying that dignified and honorable and powerful position, goes before an executive department of the Government and there makes representations in favor of a given concern—is not that a service? He need

142 not labor with his hands; he need not write long discourses. But is it not a service for a man, situated as he is, to show that he is in favor of a given project, even though he does not act to forward that project? It would not do for the Court to say, upon the introduction of evidence at this stage of the case, that there is no evidence here of any service rendered by this defendant before the Post Office department of

any substantial character. The question is: What kind of service was rendered by him? Was it service by reading, or manual service, or service of his influence?

The next point made is that there is no service here rendered of any kind. I think the letter of the 20th written by the defendant to Mr. Harlan rather denies the assertion of counsel. That, certainly, without making any comment upon it whatsoever, is some evidence of his rendering service before the department.

Therefore, concerning these two features of the question which are presented by counsel, I do not have any hesitation in saying that there is some evidence of a service being rendered before the department in a matter pending before that department.

The next and most important feature of the objection is that arising on the actual production here of the checks which represent the money that was received by the accused at different times. The checks that have been offered in evidence bear date, one of them, I believe, the 22nd of November. That and that alone, I will refer to, because the others will be governed by the same considerations.

First, there is a criticism upon the indictment itself by counsel for the accused to the effect that the charge in the indictment is that the accused, on the 22nd day of November,
143 1902, received at the city of St. Louis, a check for the payment of money in the sum of $500, which said check —the indictment proceeds to allege,—bore date of November 22nd, 1902, and was made and drawn by the Rialto Grain & Securities Company, by Hugh C. Dennis, Treasurer, President, upon the Commonwealth Trust Company, of St. Louis, payable to the order of Joseph Ralph Burton, by the name of J. R. Burton, and by the said Burton duly endorsed and then and the
there by said Commonwealth Trust Company paid in lawful money of the United States to the said Joseph Ralph Burton —then and there paid to Joseph Ralph Burton, in the language of the indictment, that is the amount of this check was, by the Commonwealth Trust Company of St. Louis then, to-wit: on the date of November 22nd, and there, to-wit: in the city of St. Louis, paid by the Commonwealth Trust Company to said Burton. That is the last clause.

Now, the criticism is that because it is alleged in the first part of this indictment that this check was delivered to him in the City of St. Louis, that it is not supported by the proof, because it was not delivered to him under the claim of counsel, inasmuch as it was sent by mail to him and delivered to him and brought to his attention first in the city of Washington.

Suppose that is so. Suppose the letter itself which contained the check, carried the check to the accused and it was brought to his attention first in the city of Washington. The balance of the indictment is the gist of the offense, contains the gist of the offense. That is to say, that on the 22nd day of November the Commonwealth Trust Company paid over to Burton the sum of $500 as proceeds of the check drawn by the Rialto Grain and Securities Company for services rendered by the defendant. So that it does not impress the Court that the bare fact that
144 the pleader set forth that the check was delivered in St. Louis vitiates the indictment, or in any manner negatives the latter averments of the indictment; therefore the case will be determined by the proof and by the legal effect of the check itself, and that, too, with special reference to whether the proceeds of that was paid to Burton in the City of St. Louis or whether it was paid to him in the city of Washington.

It is of course well known if the receipt of the money occurred in the city of St. Louis, it is within the jurisdiction of this court; if the receipt of the money occurred in the city of Washington, it is not within the jurisdiction of this court. Therefore it is a very material point in this case.

The evidence shows, taking the checks themselves and the usual course and conduct of banking operations, of which this Court, without testimony, may properly enough take judicial cognizance, that this check was drawn upon a bank in the City of St. Louis, payable to the order of a person at Washington, and sent to the person at Washington and by him properly endorsed and deposited to his credit in a bank at the City of Washington, subject to his draft or check, and forwarded by that bank in Washington through one or more agencies to St. Louis, and paid.

In addition to that it is in evidence, and which, as I say the Court may and I think could properly enough take judicial cognizance, that the common [coustom] of transacting business by the banking institutions is, that when a check is deposited, as a matter of convenience the proceeds go to the credit of the depositor for the amount of the check, subject, however, to the right—not the legal right only, which you suggest, Mr.
145 Lehmann,—of a recourse upon the depositor of a check in the event of non-payment on account of his legal liability to restore that by virtue of a contract. But for the convenient transaction of business, recognized by universal custom, so far as it seems to me, a person gets the credit, subject, in the event of that check not proving good, to have it charged back. That, I think, is the usual course of business. You have got not only the evidence of a witness who says that the check was accepted according to the usual custom, but you have the evidence of the banker in Washington, who says that is not

only the course of business with them, but is the usual custom of banks in Washington.

Under such circumstances, the question, in my opinion, should be left to the jury whether or not when this check came to Washington and was presented by Burton to the bank and taken by the bank on deposit and subject to his draft, whether, or not the intent and purpose and the understanding of the parties, taking into consideration all the evidence in the case, and the well recognized customs and usages, was to the effect that the transaction was a purchase of the check by the bank, or whether it was an undertaking by the bank to collect the check for the benefit of the depositor, as his agent.

That, I think, is a question of fact to be submitted to the jury; that I think is a settled law, as is determined by the case to which my attention was called, that of the Frisco Company against Johnson, 133 U. S.

A great many cases go much further than that case, and hold that the true interpretation of the law is to declare it, as a matter of law, a matter of agency, and not a matter of purchase. While the Supreme Court intimates very strongly that this is the case, they have left this matter to be determined
146 mainly as a question of fact.

The objection is overruled.

To which ruling of the Court the defendant, by his counsel, then and there duly excepted.

Judge Krum: There was one check offered, the objection to which has already been stated. These other checks which are offered are open to an objection of a different nature altogether.

Col. Dyer: To keep my record, I will offer this check upon which your honor has ruled.

The check referred to by counsel was read in evidence, and is in words and figures as follows, to wit:

Rialto Grain & Securities Co.
(Incorporated) No. 624.
Secretary's Check issued
General Offices Rialto Bldg. Nov. 29, 1902.
St. Louis Commonwealth Trust Company
$500 St. Louis, Mo., Nov. 22, 1902.

Pay to the
order of J. R. Burton $500.00/100
Five hundred.....Dollars.
To the Commonwealth Trust Co Rialto Grain & Securities Co.
St. Louis, Mo. By Hugh C. Dennis, President.

Indorsed on the back:
J. R. Burton
Pay Commercial Nat'l Bank, Chicago,
or order,
The Riggs National Bank
of Washington, D. C.
Arthur T. Brice, Cashier.
Pay Franklin Bank
St. Louis, Mo. or Order,
Commercial National Bank
of Chicago
Jos. T. Talbert, Cashier
147 L. Kraemer, A. Cashr.
(Perforated) Paid.

The Court: Take up these other checks in order, and if there are any special objections I will listen to them.

Col. Dyer: I offer this as the next in order.

Judge Krum: This check, if the Court please, is dated on the 15th of December, 1902. We object to the introduction of this check on the grounds already indicated with reference to the checks in general; and the further ground that there is no evidence at all on any theory of any service rendered by Senator Burton in the Post Office Department, to which the receipt of this check as compensation could be made applicable. The District Attorney concedes that this is intended to be applicable to Count No. 7. Upon the theory of the Government and under your Honor's view, evidence has been adduced tending to show the service and compensation received, not on account, but compensation received for the service, that compensation being the check already in evidence of the 22nd of November.

Now, here you have a separate count, alleging another service and a separate payment alleged to have been received as compensation for that service rendered, independently altogether of the service covered by count No. 6. Now there is not a particle of evidence of any service rendered by Senator Burton in the department between the occasion of his going to the department and making the inquiry which is shown by the letter, and the receipt by him of this check now offered in evidence.* * Here is a series of counts, each one of them necessarily by its terms based upon the services rendered.

Judge Krum: My point is that the $2500 has nothing
148 to do with the arrangement between the Rialto Grain [&nd] Securities Company and Senator Burton, for the present. * * The charge is that he rendered this service and was paid for it and received the compensation therefor,

making a complete case under the statute. Now they undertake to proceed further than that, without any evidence at all as to any service rendered, and to show a second receipt of compensation, and I respectfully submit that it is not competent in the absence of any testimony whatever.

The Court: I cannot undertake to hold the United States District Attorney to prove both of these facts which are requisite to constitute an offense, at one time. Here, the gist of the offense, as has been well said, is the receipt of some compensation. Now the receipt of compensation from the Rialto Grain and Securities Company is one act, constituting the offense charged in one count of the indictment. And the receipt of other compensation may be the subject of another charge, and it may be supported by proof and it may not, but one of the elements of every one of these counts is the receipt of the money. The question is, so far as I now understand it, whether I will insist that the District Attorney shall prove his case by putting in one count first, and then—

Judge Krum: I respectfully submit that there should be some indication from the United States attorney that he at least proposes to adduce evidence as to something done by Senator Burton in the—as charged in the indictment—in behalf of the Rialto Grain and Securities Company between the occasion of the receipt of compensation, by him in November, and the receipt of compensation, on the theory of the Government, in December. That is my position. Of course I
149 am not going to contend here that the Government should be required to prove its case in a particular way, putting in this one now, and that one hereafter—

The Court: You may be sure that in the end the Court will tell the jury that there must not only be the receipt of money, but that it must be received as compensation for services rendered, and that is all that will be stated to the jury, and the jury wil find from the facts in the case.

You may introduce your evidence.

To which ruling of the Court the defendant, by his counsel, then and there duly excepted.

The check dated Washington, D. C., December 15th, 1902, payable to the order of J. R. Burton, for the sum of $500 was read in evidence and is in words and figures as follows, to-wit:

$500.00 Washington, D. C. Dec. 15th, 1902.
....On demand..... Pay to the
Order of J. R. Burton .....
Five hundred .....Dollars
E. T.
Dec. 17 1902.

Value received and charge the same to account of
To the Commonwealth Trust Co.
The Rialto Grain & Securities Co.
St. Louis, Mo. By Hugh C. Dennis,
President.

(endorsed on the back)
J. R. Burton
Pay Commercial National Bank, Chicago
or Order,
The Riggs National Bank
Of Washington, D. C.
Arthur T. Brice, Cashier.
150 Pay Mercantile Trust Co.,
St. Louis, Mo., or Order,
Commercial National Bank
of Chicago,
Jos. T. Talbert, Cashier.
Pay the Nat'l Bank of Commerce
In St. Louis, or order,
Dec. 20, 1902
Mercantile Trust Company
Geo. W. Wilson, Treasr.
St. Louis Clearing House
26
The National Bank of Commerce in
St. Louis
Dec. 22, 1902.
(Perforated) Paid.

Arthur T. Brice, a witness of lawful age, produced, sworn and examined on the part of the United States, testified as follows:

Direct Examination

By Col. Dyer:

Q. State your name, if you please? A. Arthur T. Brice.

Q. And your residence? A. Washington City.

Q. And your occupation? A. Cashier of the Riggs National Bank

Q. How long have you been cashier of the Riggs National Bank? A. Since its organization in 1896.

Q. I show you a check of the Rialto Grain and Securities Company, of date November 22, 1902, payable to J. R. Burton

for $500: I will ask you to state to the jury whether you are acquainted with Senator J. R. Burton? A. I know him, yes.

Q. Had he an account at your bank? A. At what time?

Q. Say on the 22nd of November, 1902? A. Yes,
151 sir, he had.

Q. And did he continue to have an account there until March, 1903? A. He did.

Q. I will ask you to look at that check and state whether that check was deposited at your bank, and when? A. This check was deposited in the Riggs National Bank to the Credit of Senator Burton. It has marked on the face of it.

"E. T."

which indicates it was passed to the credit of Senator Burton over the counter of the exchange Teller.

Q. Have you examined the account of Senator Burton at your bank so as to enable you to say it was passed to his credit at that time? A. I have.

Q. Was it so passed to his credit? A. It was.

Q. After it was deposited, what was the course taken by the bank in collecting that check?

Judge Krum: We submit, [it] the court please, that is not a proper inquiry, what was done with the check.

The Court: Q. What was done with the check, and what is your usual course of treating such checks as that, if you have a usual course in your bank? A. The usual course of the bank in receiving a check, or an amount of any kind from a depositor whose standing and credit is known, is to pass it to his credit without any question; send it direct to the place on which it was drawn, or else some near by agency for collection for the bank. If the check is not paid—

Mr. Lehmann: That is objected to I sumbit that the law governs in this matter, the check having been endorsed.

The Court: I do not know what he is going to say.
152 Mr. Lehmann: I simply want to know the fact.

The Court: Do you know what he is going to say?

Mr. Lehmann: I make no objection to the fact of what was done but my objection—perhaps I anticipated too soon—was to what I understood the witness was about to state as to a usage they held as governing the rights of the parties. I certainly did not intend to object to his statement of the fact.

The Court: Q. Go on, and state the course of dealing with that check, and others of that kind? A. The usual custom of the bank, as I stated, is to deposit the check to the credit of the depositor, send it forward direct either to the place where it is drawn, for collection, or else to some convenient collection agency near the place where the check is drawn. If the check

is not paid it is returned to the bank in the usual course, going to the bank where it is first sent, and then it takes one of two courses: that check is held in the bank teller's possession until the depositor calls and takes it up, or else charged against his account as if it were a check drawn against his account, and is surrendered to him on settlement of his account, together with other checks or vouchers which he may have drawn, the depositor being duly notified of such non-payment.

Col Dyer: Q. Was there with the Riggs National Bank any agreement made with Senator Burton contrary to the course you have just indicated as occurring? A. I know of no such special agreement.

Q. At the time that that check was deposited with you, or up to the time it was returned to you as being paid, or paid here and you got the returns for it, I will get you to state whether the bank account of Senator Burton was overdrawn at
153 that time?

Objected to by counsel for defendant as not competent or material.

The Court: You may answer the question.

To which ruling of the court defendant, by his counsel then and there duly excepted.

A. This is the check of Nov. 22, 1902; my recollection tells me that his account was not on that day overdrawn.

Col. Dyer: Q. Now I show you—so as to get the whole thing in at once,—draft of December 15, 1902, drawn by the same company, payable to J. R. Burton. I show you one drawn on January 22, 1903: I show you four checks which bear the endorsement of Senator Burton: Were they sent for collection in the same way that the first one you have mentioned was sent?

A. Three of these checks were sent, in the manner I have indicated, to the Commercial National Bank of Chicago, one of them was sent direct to St. Louis. That is the only variation in the method of collection of these four checks. They were sent our correspondent in Chicago by Chicago forwarded to St. Louis. And the other was sent direct to St. Louis.

Q. The fourth one, what do you mean by that? A. The check dated January 22, 1903, and passed to the credit of Senator Burton, January 22, 1903, was, contrary to the custom in the other cases, sent direct to the National Bank of Commerce of St. Louis for the credit of the Riggs National Bank.

Q. Was there any agreement between the Riggs National Bank and Senator Burton in reference to these checks contrary to the usual course of proceeding you adopted in this case and in the other case.

Objected to by counsel for defendant upon the ground that the agreement between the bank and Senator Burton is evidenced by the checks, agreement in writing and the endorsements thereon; they are written agreements and cannot be varied by parol.

154

The Court: You may answer.

To which ruling by the Court, defendant, by his counsel then and there duly excepted.

A. Not to my knowledge. To my knowledge we had no special agreement with Senator Burton. It is the general understanding and practice of the bank.

Cross-Examination

By Judge Krum.

Q. When you say that the check was passed to the credit of Senator Burton, or that checks were passed to his credit; what you mean is that upon the deposit of a check endorsed by him it was passed to his credit and he was at liberty to check against the whole amount standing to his credit, including the amount evidenced by the check itself, isn't it? A. Yes sir.

Q. So that the check went in to swell the amount of Senator Burton's account on the date of its deposit, that was the fact, wasn't it? A. Yes sir.

Q. If, for instance, he had a balance there to his credit of $1,000 and deposited a check for $500, and that was passed to his credit, that gave him a balance of $1500 to check against? A. Yes, he might draw the whole of it without waiting to hear from the check.

The Court: Q. You have been a long time in the banking business, Mr. Brice? A. A good many years; I have been in the bank since 1882.

Q. Are you prepared to state whether or not the practice you have referred to as governing your bank was a general practice among the banks with respect to such matters as this, where a check is received and placed to the credit of an individual depositor, and when it is afterwards dishonored by the bank on which it is drawn, that the usual course of such procedure is to notify the party to come and take it up, or charge it to his account? A. That is my understanding.

Q. That has been the common understanding among bankers and the common practice among the banks? A. I have never known that custom to be controverted up to the present time.

Q. It never has been controverted? A. Not to my knowledge.

Adjourned to March 24, 1904 at 10 a. m.

155 March 24, 1904.

Court reconvened, pursuant to the foregoing adjournment, at 10 o'clock a. m.

Col. Dyer: I offer in evidence check dated January 22, 1903.

Judge Krum: We object to the introduction of the check of January 22 because it is applicable to count 8. It is not competent because there is no evidence of anything having been done by the defendant between the receipt of the check of the 15th of December and the obtaining of the proceeds of that check, and the date of the check itself now offered in evidence. This objection, of course, is substantially the same as that made to the check dated 15th of December.

Objection overruled; to which ruling of the Court, defendant, by his counsel, then and there duly excepted.

The Court: There is a stipulation between counsel with respect to these facts, I believe. That is in evidence, is it not?

Col. Dyer: It is filed as a stipulation in the case.

Judge Krum: The stipulation covers the endorsement on the check, and that was all.

The Court: I don't know that the stipulation was offered. It was not read. You offered it, and did not read it, is that correct?

Col. Dyer: No sir, I read it. I will read it again.

The Court: It is not necessary to read it, I simply want to know that it is in evidence.

Judge Krum: The stipulation obviates all proof with reference to the making of the check or its endorsement, or its being paid. There is no controversy about that at all.

Col. Dyer: I have asked the stenographer if it is incorporated in the notes, and he says not.

156 The Court: Suppose you offer it in evidence without reading it.

Col. Dyer: I offer the eighth clause of the stipulation.

The Court: Is the whole stipulation offered?

Col. Dyer: The whole stipulation is offered in evidence. The stipulation referred to was admitted in evidence and is in words and figures as follows, to wit:

157 United States of America,
Eastern Division of the Eastern
Judicial District of Missouri—ss.

United States
No. 4992. vs.
Joseph Ralph Burton

It is stipulated and agreed by the defendant and plaintiff, as follows:

1st: The Defendant, Joseph Ralph Burton, was at all of the times mentioned in indictment No. 4992, and is now a member of the Congress of the United States of America, to-wit: a Senator from the State of Kansas, duly elected and chosen, by the legislature of the State of Kansas, for a term of six years, expiring on the 4th day of March, A. D. 1907, and was at all of said times duly qualified, admitted and acting as such Senator.

2nd: It is stipulaeed and agreed that an uncertified printed copy of the Postal Laws and Regulations of the United States of America (Edition of 1902, in effect April 1, 1902) as promulgated by the Post Office Department of the United States, may be introduced and used in evidence in said cause.

3rd: It is admitted that the originals of the telegrams to and from Joseph R. Burton (hereinafter mentioned) have been by the Telegraph Companies over whose lines they were sent, destroyed, and that copies thereof now in the hands of the United States Attorney, may be introduced and read in evidence in the above entitled cause with like force and effect as the originals if produced.

The telegrams above referred to are as follows:
Burton to Dennis, dated December 13, 1902;
Burton to Dennis, dated December 17, 1902;
Burton to Dennis, dated December 22, 1902;
Dennis to Burton, dated December 22, 1902;
Burton to Harlan, dated January 6, 1903;
Burton to Dennis, dated January 24, 1903;
Burton to Harlan, dated February 11, 1903;
Mahaney to Burton, dated February 11, 1903;
158 Mahaney to Burton, dated February 14, 1903;
Burton to Mahaney, dated February 17, 1903;
Mahaney to Burton, dated February 17, 1903;
Mahaney to Burton, dated February 25, 1903;
Burton to Mahaney, dated February 27, 1903.

4th. Notice to produce, and the introduction of original letters from Harlan to Burton is hereby waived, and copies thereof, may be introduced and used in evidence, in the trial of the above entitled cause with like effect as if the original letters themselves had been introduced.

The letters above referred to are dated November 18, 1902, November 19th, 1902, November 22, 1902, December 2, 1902, December 3, 1902, December 15th, 1902, and January 27th, 1903.

5th. It is stipulated and agreed that the government may introduce and read in evidence a copy of a letter from Dennis to Burton, dated January 22, 1903, now in the possession of

the United States Attorney, with the same effect as if the original were offered and introduced.

6th. It is further stipulated and agreed that letters from the defendant, Burton to Thomas B. Harlan, dated November 20, 1902, December 9, 1902, January 19th, 1903 and February 11, 1903, now in the possession of the United States Attorney were either signed by the defendant or by his, defendant's direction.

7th. It is further stipulated and agreed that all of the letters and telegrams above referred to, purporting to have been signed by the defendant, were signed and forwarded by him, or by his direction.

8th. It is further stipulated and agreed that the checks mentioned in counts 4, 5, 6, 7, 8 and 9 of the indictment No. 4992 were duly received by the defendant in Washington, D. C. and by him indorsed and deposited with the Riggs National Bank of Washington, D. C., and were afterwards duly paid by the Commonwealth Trust Company, at St. Louis, Missouri, and that said checks and all of the endorsements thereon may be introduced and used in evidence in the trial of said cause.

159 All of the above specified papers may be introduced and used in evidence in the trial of said case, subject only to the defendant's objections to the same, or any part thereof, as to their competency, relevancy and materiality.

(Signed) CHESTER H. KRUM,
for Defendant.
DAVID P. DYER,
United States Attorney.

Counsel for the Government read check No. 1698 for $500, to J. R. Burton, signed Rialto Grain and Securities Company, by H. C. Dennis, President, the same being in words and figures as follows, to-wit:

Rialto Grain & Securities Co.
(Incorporated) No. 1698
General Offices: Rialto Bldg.
St. Louis,.
$500 St. Louis, Mo., Jan. 22, 1903.
Pay to the
order of J. R. Burton $500
Five Hundred ..... Dollars
R. T.
Jan. 27, 1903.
Commonwealth Trust Company,
St. Louis, Mo.
Countersigned: Rialto Grain & Securities Co.
W. D. Mahaney By Hugh C. Dennis,
V. Prest. Treasr Comptroller President.
(endorsed on back)
J. R. Burton.
Pay B. F. Edwards,
Cashier or order,
The Riggs National Bank
of Washington, D. C.
Arthur T. Brice, Cashier,
26
St. Louis Clearing House
The Nat'l Bank of Commerce in St. Louis.
(perforated) paid.

160 Col. Dyer: I will next offer in evidence check dated February 16, 1903.

Judge Krum: We object to that check on the ground as indicated, that there is no evidence of any service rendered or any act done by the defendant in behalf of the Rialto Grain and Securities Company in the Post Office Department, as alleged in that indictment, or anything of that character or description, between the occasion of the receipt of the check of the 22nd of January and the receipt of the check which is now offered.

Objection overruled; to which ruling of the Court the defendant, by his counsel, then and there excepted.

Counsel for the Government here read the check dated February 16, 1903, payable to J. R. Burton, signed by the Rialto Grain and Securities Company, which is in words and figures as follows, to-wit:

Rialto Grain & Securities Co.
(Incorporated) No. 2083
General Offices: Rialto Bldg.,
St. Louis.
$500 St. Louis, Mo., Feby. 16, 1903.
Pay to the
order of J. R. Burton $500.00
Five Hundred ..... Dollars
Commonwealth Trust Company,
St. Louis, Mo.
Rialto Grain & Securities Co.
Countersigned: A. D. Hardie, By W. D. Mahaney,
Secy. V. P.
161 (endorsed on back)
J. R. Burton
Pay Commercial National Bank, Chicago,
or Order
The Riggs National Bank,
of Washington, D. C.
Arthur T. Brice, Cashier.
Pay Franklin Bank
St. Louis. Mo., or Order,
Commercial National Bank
of Chicago,
Jos. T. Talbert, Cashier.
11
St. Louis Clearing House
March 3, 1903.
Franklin Bank.
(perforated) Paid.

Joseph P. Carr, a witness of lawful age, produced, sworn and examined on the part of the United States, testified as follows:

Direct Examination

By Col. D. P. Dyer:

Q. Your name is Joseph P. Carr? A. Yes sir.

Q. And you live in St. Louis, Missouri? A. Yes sir.

Q. On the 26th of March, 1903, what was your business? A. I was engaged as clerk by the Rialto Grain and Securities Company.

Q. Where is their office? A. In the Rialto Building.

Q. In this city? A. Yes sir.

Q. How long were you connected with the Rialto Grain and Securities Company, as clerk? A. From the 11th of November, 1902, until the 20th of September, 1903.

Q. Do you know the defendant, Senator Burton? A. By sight.

Q. Do you know, was Senator Burton at the offices of the Rialto Grain and Securities Company in the Rialto Building in this city?

Judge Krum: If the court please, while the defendant contends that evidence as to the payment to him and the receipt by him of $500, as alleged in the first and second counts of this indictment; as to the 26th of March, 1903, it is not com-
162 petent, for the reason that I have indicated to your honor, he admits, so there will be no occasion to occupy time with testimony on the subject, that the sum of $500 was paid to him in the city of St. Louis on the 20th of March, 1903 by the Rialto Grain and Securities Company under the contract which has been testified to by Mr. Kastor.

Col. Dyer: That admission is very good as far as it goes. The last limitation upon that paper, I shall have something to say about the evidence upon that, as to what the services were, when I get to it.

Judge Krum: I want to save the time of the Court.

The Court: I shall be glad to have that done, but the admission is not acceptable to the United States District Attorney, in the form it was made.

Judge Krum: Then I withdraw the offer.

Q. (Last question read): A. I saw Senator Burton on two occasions that I remember in the offices of the Rialto Grain and Securities Company.

Col. Dyer: Q. On what two occasions were they, Mr. Carr? A. The first time—I don't remember the day, Colonel, but it was prior to this March 26th. I had gone into Mr. Gould's office, who was then auditor of the Rialto Grain and Securities Company, to give him some papers, or on some business connected with him, and just as I was leaving the office—I might say, Mr. Gould is a loud talker, you can hear him talk very plainly—and just as I was leaving the office Senator Burton entered—as I went out he entered—and I heard Mr. Gould say "Hello, Senator". I went on back to my desk and after the Senator left I saw Mr. Gould—

Col. Dyer: You need not state what Mr. Gould said after the Senator left. How long was that prior to the 26th of March? A. I cannot recollect.

Q. On the 26th of March, did you see him in the Rialto Grain and Securities Company's offices then? A. Yes sir.

Q. In company with whom? A. He was sitting in
163 Mr. Mahaney's office, who was then vice-president and in management of the company, Major Dennis being away and he was sitting in the president's office.

Q. During the time that he was there, did you write the check I show you now (handing paper to witness), on the Mechanics National Bank of St. Louis?

Judge Krum: I submit it is wholly immaterial whether he wrote the check.

The Court: It is immaterial in itself, and is not competent, but this is a detail which may be admitted.

To which ruling by the Court the defendant, by his counsel, then and there duly excepted.

A. I wrote that check, but I cannot say whether Senator Burton was in the office when I wrote the check, because my office was in a different part of the building.

Judge Krum: Senator Burton never had this check, your Honor.

Col. Dyer: There is no pretense of that.

Q. I will get you to state when you wrote that check at the time you wrote the check, did you also write what is on the stub of the check? A. I did.

Q. And it was written on the 26th of March, 1903? A. Yes sir.

Q. After it was thus written, what did you do with the check?

Objected to on the part of the defendant, as not competent.

Judge Krum: What difference does it make, by what process a mere representative of the Rialto Grain and Securities Company became possessed of $500. I have endeavored to help my friend out, by admitting all that is necessary to be shown in reference to what was done in regard to that last payment.

The Court: And have withdrawn the admission. He may answer the question.

164 Col. Dyer: Q. What did you do with the check, that is the question?

A. May I state how I happened to draw the check?

The Court: Answer the question.

A. The check was drawn and I was told to get the currency.

Judge Krum: I object to what was told him.

The Court: Q. Who told you? A. Told me what?

Col. Dyer: Q. You stated you were told to get the currency, who told you that? A. Mr. Mahaney.

Objected to on behalf of the defendant.

The Court: The question is simply whether it came from this Rialto Grain and Securities Company. These are steps which are being proved in evidence. I cannot eliminate one.

A. I was told to get the currency on the check, and in that way got the cash, and my recollection is, to get it [—] large bills. I sent Samuel Withal, a clerk in the office, a little boy who had authority to get money from the bank, and my recollection is he went down there and got five $100 bills and brought them back and handed them to me, and I in turn took that money to Mr. Mahaney's office, and handed the money to Mr. Mahaney.

Q. Who was present when you handed the money to Mahaney? A. Senator Burton.

Q. Was that your connection with the matter? A. It ended entirely there. I left the office.

165 Cross-Examination

By Judge Krum:

Q. At the time of this occurrence, Major Denis was not here, was he? A. He was in California.

Q. How long had he been gone from St. Louis? A. He left the latter part of February, I do not recollect the date.

Q. You were connected with the Rialto Grain and Securities Company, yourself at that time? A. As a Clerk.

Q. In what condition was he when he left?

Col. Dyer: Does that grow out of my examination? I was not examining as to Dennis's condition. It does not grow out of any examination I made as to whether Dennis was well or sick.

Objection overruled.

A. I did not see the Major, Mr. Krum. He was living at the Planters House, but I had not seen him for some little time. He was sick, so I had been informed and I had not seen him.

Q. From the time you indicate, in February, down to this time in March, he had not returned to the city? A. No sir.

Q. What was his official relation to the Rialto Grain and Securities Company? A. Whom do you mean?

Q. Major Dennis? A. He was the President.

Redirect Examination

By Col. Dyer:

Q. Thomas B. Harlan was General Attorney for the company here? A. He was attorney for the Company, so I understood from the letter heads.

Col. Dyer: I offer the check upon which the money was drawn, so as to show it was the check of the Rialto Grain and Securities Company.

The Court: It is not necesssary to read it.

Col. Dyer: I offer the check and the stub of that check in evidence.

166 The check and stub of check referred to were admitted in evidence and are in words and figures as follows, to-wit:

(Copy of check)

The Mechanics' National Bank of St. Louis
St. Louis, March 26, 1903 No. 214

Pay to the
Order of Cash.....$500.00
Five Hundred .....Dollars
W. D. Mahaney, V. P.

(Stamped)
$500
Cash

A. D. Hardie
(Endorsed on back, in pencil) Sam. Withall.

(Copy of Stub)

No. 214
Date 3/26 1903
Order of
J. R. Burton $500
Salary
(Stamped)
Entered.
(In pencil) 1/5/03
2/16/03

W. D. Mahaney a witness of lawful age, produced, sworn and examined on the part of the United States, testifies as follows:

Direct Examination

By Col. D. P. Dyer:

Q. Will you please state your name to the Jury? A. W. D. Mahaney.

Q. On March 26th, 1903, were you connected with the Rialto Grain and Securities Company in any wise? A. Yes

167 sir.

Q. In what capacity? A. As vice-president.

Q. How long had you been connected with the Rialto Grain and Securities Company, Mr. Mahaney? A. Since September, 1902.

Q. Who composed the first board of directors of that company? A. Major Dennis, Mr. Harlan, Mr. Leftwich and myself. Possibly there was one more, I do not remember.

Q. Do you know Senator Burton? A. Yes sir.

Q. I will get you to state to the jury whether you saw him in the offices of the Rialto Grain and Securities Company in the city of St. Louis on the 26th of March, 1903? A. I did.

Q. Did you at that time pay to him any money for the Rialto Grain and Securities Company?

Judge Krum: We object to that question, if the Court please, as not competent, for the same reasons which have been indicated as applicable to the checks which have been objected to and admitted over the objection.

Objection overruled. To which ruling by the court defendant, by his counsel, then and there duly excepted.

A. Yes.

Q. How much? A. Five hundred dollars.

Q. Can you state the size of the bills, or the character of the money? A. No sir, I cannot.

Q. When had you, prior to the payment of that money on the 26th of March, 1903, met Senator Burton for the first time? A. In December, 1902, at Washington.

Q. In company with whom, if anyone, did you meet him at Washington? A. With Major Dennis and Mr. Wicks.

Q. Where did you meet him? A. In the New Willard Hotel at Washington.

Q. Do you recollect the date of that meeting? A. The 15th of December, 1902.

168 Q. I want to ask you whether or not there was any conversation had at Washington with Mr. Burton at that time, concerning the Rialto Grain and Securities Company, or Hugh C. Dennis, its president? A. Yes sir.

Q. Where did you meet Senator Burton in the Willard Hotel? A. I was introduced to him in the lobby of the hotel.

Q. State what occurred after your introduction? A. Senator Burton and Major Dennis went up in the elevator with Mr. Wicks, and about ten minutes later, Mr. Wicks came to the lobby of the hotel, where I had remained, and asked me to join them in Major Dennis' room, and I did so.

Q. State what occurred in the room and what was said in that room? A. Major Dennis produced a copy of the indictment which had been found against him by the Federal Grand Jury, for Senator Burton's inspection. It was read over and discussed—I cannot recall the exact language of course—and Senator Burton asked Major Dennis to tell him all he knew of the actual facts, that inasmuch as he was counsel, he must be put in complete possession of all information bearing upon the subject.

He also asked about the conduct of the Rialto Grain and Securities Company and the rules governing marginal trading. The discussion lasted perhaps an hour. I don't know just how long, and Senator Burton left, saying he would meet the major the next morning.

Q. Did you see them when they met the next morning? A. Yes sir.

Q. What was said by either Dennis or Burton when they met the next morning, as to what was to be done, if anything? A. Well, they talked for a few moments in the lobby of the hotel; I cannot say exactly what was said; and then Major Dennis excused himself to me and went away with Senator Burton.

Q. Was anything said in the presence of Senator Bur-
169 ton as to where they were going? A. Yes sir, that he was going to take him over to the department.

Q. What department? A. He did not state at the time.

Q. Did you afterwards learn from Senator Burton that he had gone with him to the Post Office Department? A. Not from Senator Burton.

Q. How long did you remain in Washington at that time? A. From Monday morning until noon of the following day.

Q. Did you and Major Dennis go to Washington together? A. Yes sir.

Q. Did you leave there in company with him, or where did you go?

Objected to as immaterial.

Q. You left there together? A. Yes sir.

Q. Did you return to Washington at any time after that? A. No sir.

Q. When, after that time of leaving Washington, did you next see Senator Burton? A. On the 24th of December 1902.

Q. Where did you see him then? A. In the office of the Rialto Grain and Securities Company, in this city.

Q. Who was present at that time? A. Judge Krum, Mr. Harlan, Senator Burton and myself.

Q. What was said, if anything, in that conversation, about the indictment against Dennis, or the affairs of the Rialto Grain and Securities Company? A. The indictment was discussed by those gentlemen in quite a lengthy interview and the affairs of the Rialto Grain and Securities Company were discussed to some extent. Finally—shall I continue?

Judge Krum: Go ahead.

Col. Dyer: Yes, state all that occurred.

A. Finally, they agred there was not much danger in the indictment and the result of the trial, and the question of Senator Burton's appearing here as counsel in this city was dis-
cussed and referred to him, and after some discussion
170 pro and con they decided it would be as well for him not to appear here.

Q. What was said in that conversation by Mr. Burton or anyone else, as to why he would not appear here? A. The reason given and discussed was, that it would probably be ill advised for him to appear here, on account of his official position, because it would perhaps antagonize the Post Office officials here. At that time the impression obtained, as expressed by Mr. Harlan, that Inspector Dice was very antagonistic to Major Dennis, and they construed the situation as being such that it would be better for the Senator not to appear, because it would show he was perhaps too much interested in the Post Office department feature of the case.

Q. What, if anything, was said in that conversation, about keeping the Post Office Department at Washington on good terms with the Rialto Grain and Securities Company?

Judge Krum: We object to this method of suggesting to the witness.

Col. Dyer: Q. What if anything was said? State all that was said. A. I cannot recall at that time that anything in that particular line was said.

Q. At any other time? Did you see Senator Burton after that meeting here in December, after your visit to Washington in the same month? A. Yes sir, I saw him later on.

Q. Where did you see him? A. At the office of the Rialto Grain and Securities Company.

Q. What time was that? A. March 26, 1903.

Q. Were those the only three times you saw him, to talk with him, once in Washington, and then here in December, and then in March? A. No, sir, I met him several times in the Rialto Building later on. I also saw him at the Planters House at that time.

Q. Did you at any time talk with him and discuss with him the affairs of the Rialto Grain and Securities Company
171 in reference to its relations to the Post Office department? A. On the occasion of his visit there on March 26, 1903, the attitude of the department toward the Rialto Grain and Securities Company was discussed at great length and I stated to him that, as far as I knew, there was nothing pending of a dangerous character, and he agreed in that.

Judge Krum: Q. I did not understand that? You stated there was nothing pending? A. That as far as my knowledge went there was nothing pending of a dangerous character at that time, against the Rialto Grain and Securities Company, and he agreed in that opinion.

The Court: Pending where? A. In the Post Office department at Washington.

Col. Dyer: Q. Was there anything said in that conversation about the complaints that had been referred to the Post Office inspectors here for examination? A. I do not think there was. I do not recall.

Q. What, if anything was said by Senator Burton to you about this payment of $500 being the final payment to him, or why it was ended there, if you know?

Judge Krum: If the court please, I object to that way of examining the witness.

Objection sustained.

Col. Dyer: Q. State all that was said there? A. On the occasion of his visit to the office on March 26th?

Q. Yes. A. I told him we were anxious to reduce our fixed charges. There had been very heavy drafts on the company in various ways, and inasmuch as he was not going to be in Washington and there was nothing that I knew of pending there which would occasion his services, I thought it would be, perhaps, as well to discontinue his services. He agreed in that, and I gave him the money.

Q. I will get you to state whether or not this Rialto Grain and Securities Company had any office or had an office
172 anywhere, other than the offices in the city of St. Louis, to your knowledge? A. Not to my knowledge.

Q. I will get you to state whether there was any business of that company at Washington to your knowledge other than the business with the Post Office Department?

Judge Krum: We object to that as not competent.

The Court: You may ask him if there was any business of the company at Washington, and if there was any he may state what it was?

Col. Dyer: Q. State what it was? A. None that I know of.

Q. Was there anything said in either of these conversations with Senator Burton about the character of the literature that was being sent out by the Rialto Grain and Securities Company? A. No sir.

Q. I will get you to state whether there was any conversation—I have got to call your attention to some of these facts by making suggestions—state what was said, if anything, with reference to the destruction of certain letters that had been written by Senator Burton? A. On the occasion of his visit on March 26th, after he had been paid this money, he said to me that if I had any correspondence from him it would be perhaps as well to destroy it, lest any misconstruction might be put upon it. That letters from a man in his position were frequently

misconstrued, and it would be as well to have them out of the way. I had two letters from him there in my desk at the time, and destroyed them in his presence.

Q. Did you show them to him? A. Yes sir, I showed them to him. I said "I have two of your letters here", and destroyed them in his presence.

Q. Those letters were destroyed in his presence, how were they destroyed? A. I tore them up and threw them in the waste basket.

173 Q. What reason, if any, other than you have stated, was given by Senator Burton for the destruction of those letters?

Judge Krum: I submit, if the court please, that is not proper.

The Court: I think that is right. What did he say about the destruction of the letters?

Col. Dyer: Q. What did he say? A. Nothing, except what I have told you, that letters from a man in his position —official position, might be misconstrued in the event of anything happening, if they came into the possession of people antagonistic, they might be misconstrued and it would be better to have them out of the way. And he asked me if I had any letter, and I said I had two, and I destroyed them right away.

Q. I will ask you whether or not, in that conversation, anything was said by him in that connection, about his connection, or former connection with, or the publication of letters of the National Securities Company?

Judge Krum: Objected to as not competent, even if the statement was made.

The Court: He may answer. It is calling attention to a particular subject after his saying he recollected some.

Judge Krum: The point of the objection is not to the form of the question, but to the subject of the inquiry. The National Securities Company is not involved here in any way. There is no inquiry open as to that company in this case.

The Court: What is that?

Judge Krum: The National Securities Company.

The Court: What is your purpose, Col. Dyer?

Col Dyer: I want to show the reason—I don't care anything about the National Securities Company—I am trying to get out of this witness all the statements made by Burton at that particular time as to why he wished his correspondence with the Rialto Grain and Securities Company destroyed, and

174 the reasons he gave, if any, for that destruction.

Judge Krum: The witness has stated the reason the Senator gave.

The Court: The question is whether there were any other reasons given, and he now calls attention to a particular line, with a view of calling out if any other reasons were given for destroying the letters. He may answer the question.

To which ruling by the court the defendant, by his counsel, then and there duly excepted.

A. He said his name had been connected in some newspaper articles with the National Securities Company, and it had created a great deal of unfavorable comment, and he did not want a recurrence of anything of that kind.

Col. Dyer: Q. Is that all that occurred that you recollect at that time? A. That is all I recall.

Q. Who was present at the time, if anyone, when you paid him these $500 in currency? A. There was no one present at the time.

Q. From whom did you get the $500 that you paid him? A. From Mr. Carr.

Q. Joe Carr, the last witness on the stand? A. Yes sir.

Q. You may state, if you will, at what time Mr. Dennis, the president of this company, left St. Louis in 1903? A. My recollection is that it was February 5. I am not positive, however.

Q. After he left here, you, as vice president, became the acting President of the company? A. Yes sir.

Q. Do you recollect a man by the name of McGowan, who made claim against the Rialto Grain and Securities Company? A. Yes sir.

Q. Was there, to your knowledge, any correspondence by any officer of the company, either yourself or Mr. Harlan, with Senator Burton, in reference to that claim of McGowan's? A. There was.

175 Q. I show you a message, dated the 11th of February, 1903, and ask you if you recall having sent that message? A. (After examining paper) Yes sir.

Col. Dyer: That is one of the telegrams covered by this stipulation. I will read it.

Judge Krum: It is objected to because it is not competent upon any theory open under this indictment. I understand it is offered with reference to what Mr. Mahaney has indicated as being a claim by one McGowan. Now, there is nothing averred in the indictment with reference to any action taken by Senator Burton in reference to that matter in behalf of the Rialto Grain and Securities Company, in the Post Office depart-

ment, or anywhere else. There is a specific service alleged to have been rendered by the defendant, and that is all.

The Court: What is that specific service alleged?

Judge Krum: It is the same in all the counts "That the services so as aforesaid rendered, consisted in part of visits to the said Post Master General, the Chief Post Office Inspector, and other officers of the Post Office department of the United States; and of representations and statements made to the said Post Master General, the said Chief Post Office Inspector and said other officers, which said visits, representations and statements, so as aforesaid made by the said Joseph Ralph Burton, were made with the view and for the purpose of inducing said Post Master General", to decide the question which the indictment alleges was pending in the department favorably to the Rialto Grain and Securities Company. If your Honor please, we have proceeded upon what we have ventured to consider the obvious hypothesis, that the defendant can be called upon to meet only what has been averred against him. And accordingly, when the indictment alleges what the service was—namely, visits to the Post Master General, The Chief Post Office Inspector, and representations and statements made to these officers,
176 that the evidence as to what the service was will be limited to the averments thus made.

The Court: It is true that up to now there has been evidence with respect to these several persons making complaint? That was admitted for the purpose of showing that there was something pending in the department, the purpose being to get at the fundamental thing in this case, which is, Did he render services connected with anything pending in the department? There is no charge in this indictment with respect to particular services rendered in connection with the complaints of A or B or C. The general charge is that he rendered services in the department in a matter in which the United States is interested; and his service in a general way is referred to, namely, appearance in the department and different offices in the department, and inducing their favorable consideration. Certainly there is no reason, based upon the general statement in the indictment, why you cannot inquire into anything the defendant did in the department, during the time involved in this litigation, that might affect the question of the Post Master General's action in regard to the Rialto Grain and Securities Company. The objection is overruled.

To which ruling by the Court the defendant, by his counsel, then and there duly excepted.

The Court: I cannot tell what the dispatch will show, but assume some connection will be shown.

Judge Krum: There is not a particle of connection.
Col. Dyer: We will show the connection.
The Court: Of course I cannot tell now.

Col. Dyer: Before asking him further questions, I offer to read a dispatch on the same date as this one, Feb. 11, 1903, from Senator Burton to Thomas B. Harlan.

Judge Krum: We object to this, if the court please, because the telegram shows on its face that if it resulted from any inquiry made by Senator Burton of anybody, it was entirely made by him in the Indian department. I respectfully
177 suggest that that was a little remote from the scene of operations sought to be covered by this indictment.

Objection overruled;
To which ruling by the court the defendant, by his counsel, then and there duly excepted.

Counsel for the Government here reads the telegram dated Washington, D. C. Feb. 11, 1903, addressed to Thomas B. Harlan, and signed J. R. Burton, which telegram is in words and figures as follows, to wit:

Western Union Telegraph Company

Received at 412 & 414 Pine Street, St. Louis, Mo.
Telephones: Main 246; Kinloch, B 520 Standard time
1677

30w h is 86 Paid Govt.
St Washington D C Feb. 11-03.

Thos. B. Harlan,
Care Rialto Grain & Securities Co., Rialto Bldg.,
St. Louis, Mo.

S. M. McGowan is Indian Agent at the place named but Dept had telegram from him yesterday which indicates that yesterday he was in the Territory Indian Commissioner will wire today to see if McGowan is in St. Louis and will make inquiry of him why he is taking such proceedings. Message though signed by him may have been signed by his clerk. Dept has great confidence in the real McGowan.

J. R. BURTON.

1253 pm

Col. Dyer: Q. Did you see that message when it was received here? A. Yes sir.
Q. Now, when that message was received, you sent this wire to him of the same date, to Senator Burton, didn't you? A. (After examining paper) Yes sir.

Judge Krum: Now, we submit that what has been developed shows that this telegram from Mahaney to Burton was absolutely irrelevant to any issue in this case.

Objection overruled; to which ruling by the court the defendant, by his counsel, then and there duly excepted.

178 Counsel for the Government here read the telegram addressed to J. R. Burton, Washington, D. C., dated February 11, 1903, signed W. D. Mahaney, which telegram is in words and figures as follows, towit:

2/11/3

Hon. J. R. Burton,
Washington, D. C.
Discontinue investigation. Matter settled amicably.
Paid. Rush. W. D. Mahaney.

Col. Dyer: Q. Now, I will get you to state whether at the time these messages were being sent and received, McGowan had threatened the Rialto Grain and Securities Company, by having inspectors examine it?

Counsel for defendant objected to the question.

The Court: The question is objectionable in form; whatever he did may be shown as to complaints.

Col. Dyer: Q. How long was that controversy between McGowan and the Rialto Grain and Securities Company, and the message I have last read?

Judge Krum: That question assumes there was a controversy.

Col. Dyer: Q. Was there a controversy? A. There was.

Judge Krum: I submit that is a mere assumption. He has not offered any testimony on that subject.

The Court: Answer the question.

A. There was a controversy over a sum of money.

Judge Krum: Q. Was that in writing? A. No sir, it was verbal.

Col. Dyer: Q. Go on? A. As to whether there was anything due him or not, and if there was, how much?

Q. Did you know, at the time of this controversy, that McGowan was an Indian agent?

Objection on behalf of defendant.

A. I did not.

Q. Did the letters that you alluded to awhile ago as
179 having been destroyed by you, have anything to do with or anything to say about the McGowan matter?

Judge Krum: That is objected to as not competent.

The Court: The objection is overruled. The evidence so far tends to show it was done by the instigation of the accused, and you can state what they contained, if you know.

Col. Dyer: Q. Give the substance of the letters? A. My recollection is that one was confirmatory of the telegram you read as to McGowan being in good standing with the department.

Q. Can you recall the contents of the letter any further of of the letters that were destroyed, as you say, at the instance of Burton? A. There was another letter in answer to a telegram which I had sent him at one time, or in answer to a letter which I had written him, saying I had been advised there had been a couple of inspectors appointed—

Judge Krum: This is objected to.

Col. Dyer: Q. Before going into that any further, I will show you a telegram, dated Feb. 25, 1903, and ask you to look at that and state whether you recollect of having sent that message? A. (after examining paper) I did send this.

Col. Dyer: I will offer in evidence and read that message.

Judge Krum: That is objected to as not competent, because it is not in any direction as indicated by the indictment.

The Court: Inasmuch as the indictment does not indicate any details, but the general statement, any of this testimony which tends to show services were rendered before the department is competent.

Judge Krum: I beg your pardon, but is it your honor's view of the indictment, that it does not allege any particular services?

The Court: It generally states what it was, but not the particular complaint of A or B; simply that services were rendered before the department, and that services were ren-
180 dered in connection with that matter generally.

Judge Krum: This telegram shows on its face that it has no relation to any matter pending in the department.

Objection overruled; to which ruling by the court the defendant, by his counsel, then and there duly excepted.

Counsel for the Government here read the telegram dated Feb. 25, 1903, addressed to J. R. Burton and signed W. D. Mahaney, which is in words and figures as follows, towit:

2/25/3

Hon. J. R. Burton,
Washington, D. C.

Report to me today from apparently reliable source that two special inspectors have been appointed to investigate us and report to Postmaster General. Please verify and advise at once. W. D. Mahaney.
Paid.

Col. Dyer: Q. You say you sent that meassage? A. I did.
Q. In answer to that, did you receive this *meassage from* Washington? A. (after examining paper) I did.

Col. Dyer: I offer that reply in evidence.

Judge Krum: We object to this for the same reason as before.

Objection overruled for the same reason. To which ruling of the court the defendant, by his counsel, then and there duly excepted.

Counsel for the Government here read the telegram, dated Washington, Feb. 27, addressed to W. D. Mahaney, and signed J. R. Burton, which telegram is in words and figures as follows, to-wit:

181 Postal-Telegram Cable Company.
124

Received at Laclede Building, 4th & Olive Sts., St. Louis, Mo. k27 CH. N. 15-collect.

Washington, D. C., Feby. 27th-03.

Mr. W. D. Mahaney,
Care Rialto Grain & Securities Co.,
Rialto Bldg., St. Louis, Mo.

No complaint in the department against you will write full particulars by tonights mail.

J. R. Burton.
1151AM.

Col. Dyer: Q. Now, after having seen these messages, can you state whether one or both of the letters that were destroyed referred to this matter about which you were writing or telegraphing? A. One of them did.
Q. Can you state the contents of that letter which you destroyed?

Objected to as immaterial for the reasons already indicated. Objection overruled. To which ruling by the court the defendant, by his counsel, then and there duly excepted.

A. I cannot state the contents, except that I know they were confirmatory of that telegram.

Q. I will get you to state whether, at the time of the payment of this $500—you have said that nobody was present at the time you gave the money to Senator Burton; was there any conversation had in reference to that payment, after you had paid it to Senator Burton, in the presence of anyone else? A. There was.

Q. State who was present after you had made payment, and what was said in the presence of Senator Burton, or by him, in that conversation? A. Hector McRea.

Q. *Who was Hector McRea?* A. *He was comptroller of the* Rialto Grain and Securities Company. He came into the office shortly after I had paid the Senator, and I explained to him that—

Judge Krum: This was in the presence of the Sena-
182 tor, was it?

A. Yes sir. That we had for the time being, severed our connection; that the Senator had been paid and had expressed his willingness at any time, to respond to a telegram in case we needed him. That is as far as I recollect.

Q. The business that was transacted there, after Maj. Dennis went away, was done under your supervision as the vice president, I take it? A. Yes.

Q. Did you send this message to Senator Burton on the 14th of February, 1903? A. (After examining paper) That is mine. I sent that.

Judge Krum: We object to that on the ground that the telegram itself shows that it has nothing to do with this case.

Objection overruled; to which ruling by the Court the defendant, by his counsel, then and there duly excepted.

Counsel for the Government here read the telegram dated February 14, 1903, addressed to J. R. Burton, and signed W. D. Mahaney, which is in words and figures as follows, towit:

2/14/3

Hon. J. R. Burton,
Washington, D. C.

Thanks for letters. State Investigating Committee here, asking for information. Harlan says no occasion for anxiety. All we want is unbiased investigation. Do you think you can do anything to help situation? Check mailed today.

W. D. Mahaney.

Paid.

Col. Dyer: Q. You sent that? A. Yes sir.

Q. Did you receive this message from Senator Burton, dated Washington, Feb. 17th, 1903? A. (after examining paper) I did.

Judge Krum: I submit this telegram obviously has nothing to do with this case.

Col. Dyer: I propose to ask him what paper it was, whether the Globe Democrat or the Westliche-Post.

183 Judge Krum: Is that telegram in reference to the check?

Col. Dyer: Yes sir.

Judge Krum: We withdaw the objection.

Counsel for the Government here read telegram dated Washington February 17, 1903, addressed to W. D. Mahaney, signed J. R. Burton, which is in words and figures as follows, towit:

Western Union Telegraph Company
Received at 412 & 414 Pine Street, St. Louis, Mo.
Standard Time
1401

4018 CH OP HS 20 Paid Govt.
St. Washington DC 17

Mr. W. D. Mahaney,
Rialto Bldg.,
St. Louis, Mo.

Did you send paper Saturday it has not arrived.
J. R. Burton.

Col. Dyer: Q. Did you send him in answer to that this message dated February 17, 1903? A. (after examining paper) Yes sir.

The Court: Q. What does that paper refer to, a check? A. Yes sir.

Col. Dyer: Q. A check of the Rialto Grain and Securities sent to Washington A. Yes sir.

Counsel for the Government here read telegram dated February 17, 1903, addressed to J. R. Burton, and signed W. D. Mahaney, which is in words and figures as follows, to wit:

2/17/3

Hon. J. R. Burton,
Washington, D. C.

Was called away unexpectedly Saturday. Forgot to mail paper. It was sent to you yesterday.
Paid. W. D. Mahaney.

184 Cross-Examination

By Judge Chester M. Krum:

Q. In the discussion between Senator Burton Mr. Harlan and myself on the day before Christmas, at the office down here

on Fourth and Olive Streets, was not the proposed appearance of Senator Burton in the case against Major Dennis disposed of on the ground that it would appear to be over-loading the case with lawyers, rather than his presence here would tend to antagonize Mr. Dice? A. My understanding was as I have stated.

Q. Who made the suggestion that Mr. Burton better not appear because of the possibility of some friction between him and Mr. Dice? A. It was either Senator Burton or Mr. Harlan. My recollection is it was the Senator.

Q. I didn't [to] it, did I? A. No sir, I don't think you did.

Q. I was there? A. You were there.

Q. Major Dennis had been indicted by reason of the transactions of the Brooks Brokerage and Commission Company, hadn't he? A. Yes sir.

Q. And it was that indictment we were discussing there? A. Yes sir.

Q. Senator Burton had been employed by the Rialto Grain and Securities Company to take part in the defense of that case, hadn't he? A. I did not understand and was not told the terms of his employment. But he did discuss the case with you there that night.

Q. As I understand it, Mr. Mahaney, you have no personal knowledge, acquired from Senator Burton, or from Mr. Harlan, of the details or conditions of the agreement under which Senator Burton was employed by the Company. Your information on that subject was obtained, as I understand it, from Major Dennis, is that correct? A. No sir, from Mr. Harlan.

Q. Were you informed by Mr. Harlan? A. What he said to the Senator.

185 Q. And that is the only information you had with reference to what the contract was between the Senator and the Company? A. That is all.

Q. Now this check to which these telegrams relate, was a check of that date, which has been read in evidence here, wasn't it? It was sent to him under the contract that had been made with him? A. That first check was sent by me under the instructions of Mr. Harlan.

Q. I do not mean the check of Nov. 22, but the check that this telegraphing was about. That was sent under the contract, wasn't it, to meet a payment that was due at that time? A. A payment that I understood to be due to Senator Burton as salary.

Q. And this money you paid him on the 26th of March was also paid, as you understood it, by reason of the contract between the company and the senator, wasn't it? That is, the contract was ended, and this amount was due as the payment

called for by the contract at that time; that is correct? A. I did not so understand it, that the contract was ended, until I had explained to the Senator that we were hard up, and so on.

Q. The contract was ended after you made the payment? A. Yes sir, his services ended then.

Q. When the payment was made, it was made under the contract, wasn't it, and by reason of the contract? A. Yes sir.

Q. The indictment you have refered to as being discussed by Senator Burton, Mr. Harlan and myself, was the indictment upon which Major Dennis was tried here in this court, wasn't it? A. Yes sir.

Q. And Senator Burton did not in fact take part at that trial? A. No sir.

Q. The defense was conducted by Mr. Harlan and myself, wasn't it? A. Yes sir.

186 Redirect Examination

By Col. Dyer:

Q. Judge Krum has asked you about the payment of money under a contract; you say that his services were not dispensed with until you made the payment to him upon the 26th of March. That is when his services were dispensed with? A. Yes sir.

Q. Your understanding was that he was on a salary of $500 a month, was it? A. Yes sir, that is what I was told by Mr. Harland.

Q. And that his services were to cover what?

Judge Krum: We object to what Mr. Harlan told Mr. Mahaney.

Col. Dyer: I suppose that objection is well taken.

The Court: I think it is, if the information came from Mr. Harlan.

William A. Jones a witness of lawful [—], produced, sworn and examined on the part of the United States, testified as follows:

Direct Examination

By Col. D. P. Dyer:

Q. Your name is William A. Jones? A. Yes sir.

Q. Will you state your present place of residence? A. Washington, D. C.

Q. And your official position at Washington? A. Commissioner of Indian affairs.

Q. How long have you been commissioner of Indian affairs? A. About seven years.

Q. Do you know Senator Burton? A. I do.

Q. How long have you known him? A. Two or three years. I don't remember exactly when I met him first.

Q. Do you know a man by the name of McGowan A. Yes sir.

Q. S. M. McGowan? A. Yes sir.

Q. In February, 1903, what connection, if any, had McGowan with the Indian Commissioner's office? A. He was superintendent of the Indian School at Chetoka, Oklahoma.

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Q. I will get you to state whether or not in February, 1903, you had a visit from Senator Burton, and whether, during that visit, anything was said about McGowan?

Judge Krum: We object to that. I concede it would be competent for the Government to show that on this occasion, if it were a fact, Senator Burton indicated to the Indian Commissioner what his own relations with the Rialto Grain and Securities Company were. But that the Senator made an inquiry of the Indian Commissioner in regard to McGowan, I submit is not competent.

The Court: I would like you to state the purpose of this inquiry. If it relates exclusively to a conversation with the Indian Commissioner in his department, of course it is not competent.

Col. Dyer: I have undertaken to pave the way for this examination by showing the correspondence between the Rialto Grain and Securities Company, and Senator Burton, at Washington, in reference to McGowan's connection with that company. Those letters are in evidence now. I propose to show by this witness, if I can, that he desired the commissioner, under whose direction this agent was, to ask him to abandon his claim against the Rialto Grain and Securities Company, with a view of settling those matters.

Judge Krum: That is still incompetent.

Mr. Lehmann: For two very obvious reasons. One is, that the claim of McGowan against the Rialto Company is not a matter in which the Government is interested, and consequently an occurrence hardly to be said in the Indian department, even; or rather, on the premises of the Indian department. That is, the nearest it comes to being any department of the Government.

Col. Dyer: Your Honor will see the gist of this offense if there is an offense, is for services rendered the Rialto Grain and Securities Company before a department, towit: The Post Office Department. I do not care whether the services were rendered in the office of the Post Master General, or within the building occupied by the Post Office Department. It is competent for me to show that he was rendering these

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services to the Rialto Grain and Securities Company, which would ultimately reach the Post Office department.

The Court: Do you propose to show that he requested Mr. Jones to go to the Post Office department?

Col. Dyer: No sir.

The objection is sustained.

Col. Dyer: I propose to show nothing about that, and can only show the conversation that took place between them in the light of these messages I have read; that he went to the commissioner, making inquiry as he was asked to inquire, as to this matter affecting the Rialto Grain and Securities Company. It was done for the purpose of showing services rendered by the defendant to the company for the company at Washington. He might go and talk to anyone.

The objection was sustained.

Col. Dyer: Q. Did you have a conversation with him?

A. I did.

Q. In that conversation did he state to you what relations he bore to the Rialto Grain and Securities Company?

Judge Krum: We object to that as improper.

The Court: I think that is quite admissible. If he said anything concerning his relations to the Rialto Grain and Securities company; the objection is overruled.

A. He did not, to my recollection.

Judge Krum: I withdraw the objection.

Col. Dyer: With your Honor's ruling, of course I submit to that, I will not prosecute the inquiry further with Mr. Jones I wanted to draw out the conversation between Mr. Jones and Senator Burton in regard to this matter, and if that is not competent, I will not inquire further of Mr. Jones.

Counsel for the Government offers in evidence a letter dated Dec. 2, 1902, addressed to the Hon. J. R. Burton, signed by Mr. Harlan, and also the reply to that, being a letter dated Dec. 9, 1902.

189 Judge Krum: We interpose the same objection to these letters, as indicated before, as being incompetent.

Objection overruled, to which ruling by the court the defendant, by his counsel, then and there duly excepted.

Counsel for the Government here read the letter dated Dec. 2, 1902, addressed to J. R. Burton and signed by Mr. Harlan; and also the letter of Dec. 9, 1902, addressed to Thomas B. Harlan,

and signed, J. R. Burton; which letters are in words and figures as follows, to-wit:

December 2, 1902.

Hon. J. R. Burton,
c/o Senate Chamber,
Washington, D. C.

My Dear Sir:—On Saturday night, I wired you that indictments had been returned, bonds given, etc. I was somewhat surprised on my return here Saturday night, to be met at the train by one of the clerks of the Rialto Company, who informed me that Major Dennis and Mr. Garland had been indicted and that day arrested. Later on, I learned also that Mr. Brooks had been included in the indictments, and had also been arrested and given bond. I have not yet seen the indictments, and do not know whether these parties were indicted jointly, nor do I know the specific charges against them. I expect to have a copy of the indictment by tomorrow.

Thus you will see, that all efforts to prevent this action, were defeated almost before we got started. The question is, how to meet the situation as it now exists.

As was to be expected, the fact of the indictments was telegraphed as a news item all over the country, and to-day's mails have brought in several communications threatening in their nature; and the balance of the week will probably bring a great many more. Wherever a party requests his account closed, the same will be done promptly, and whatever he is entitled to will be at once remitted, and such accounts will probably never be heard of again. It is where parties have lost money by the action of the market that will give us the most trouble, as they will undertake to blackmail the Company into paying them something that they are not entitled to. In all such cases, we have determined to stand strictly on our rights, and the result will probably be numerous complaints pouring into Washington from different parties of the country. We will be able to meet each one of these cases individually, and show the Post Office Department a clean record. It is more the fact that the Post Office has advertised its intention to take hold of these cases that will bring the complaints, than any justness that they will contain. Locally, I believe we will be able to control the situation, as this business has been pretty thoroughly gone over by the Inspectors, and they understand just what we are doing and how we are doing it.

At your end of the line you will, of course, use your own judgment in handling the situation. We will, at all times, be glad to observe any request made by the Post Office Department, or to submit to any examination that they may direct.

190 J. R. B. -2-

The cases here are set for trial on the 6th of January, and Judge Krum and I are preparing now for trial. We will get all the evidence in shape; I will thoroughly brief the law pertaining to the cases, and when we have got matters worked out, we will submit the whole case to you for your consideration, and would certainly much appreciate it if you could find it convenient to be here to participate in the defense.

Yours very truly,

T. B. H. THOS. B. HARLAN.
E. E.

United States Senate
Committee on
Forest Reservations and the
Protection of Game.

December 9, 1902.

Mr. Thomas B. Harlan,
St. Louis, Mo.

My Dear Harlan: There is no man by the name of J. H. Bowman who is a post office inspector. This man Bowman in impersonating a post office inspector violated the statutes, and laid himself liable to punishment. The man operating in Colorado Springs was also a fraud. There has gone from this office no instructions whatever about the Rialto Company, and there is nothing in this office against you at this time. The matter in St. Louis, as you know, is in the hands of Mr. Dice there. I herewith return the letter.

I would suggest that you prepare carefully the case of Dennis for early next month, and I have learned to know that you must watch carefully that the jury is not set up on you. These are all important questions that you must carefully consider.

I will take care of things at this end of the line.

Please keep me constantly advised.

Faithfully yours.

J. R. BURTON.

A recess was here taken until 2:00 o'clock p. m.

March 24, 1904, 2:00 p. m.

Court reconvened pursuant to foregoing adjournment.

Col. Dyer: I offer in evidence a letter covered by the stipulation, dated December 3, 1902, of Thomas B. Harlan, to J. R. Burton.

191 Judge Krum: We submit that that is not competent, being merely Mr. Harlan's declaration to Senator Burton.

The Court: You may read the letter.

To which ruling of the court the defendant, by his counsel, then and there excepted.

Counsel for the Government here read the letter dated Dec. 3, 1902, addressed to J. R. Burton, signed Thomas B. Harlan, which is in words and figures as follows; towit:

December 3, 1902.

Hon. J. R. Burton,
c/o Senate Chamber,
Washington, D. C.

My Dear Sir: —

On Monday of this week, a man dropped into the office of the Rialto Company by the name of J. H. Bowman, of Allentown, Pa. He had an account with the Company, having invested about $1500.00, on a part of which he had some loss, and other parts, some gains. I was not here at the time, but he saw Mr. Leftwich, who is Vice-President of the Rialto Company; and, after representing himself to be a Post Office Inspector—in fact, he produced a business card to the effect that he was a Post Office Inspector—he undertook to use his official position to force a settlement of his account contrary to his just rights, and did succeed by reason of his representation, in getting a little the best of the Company.

Now, this morning's mail brings us a letter from Colorado Springs, from a Mr. Shove, which I enclose to you, and which indicates that some officer of the law—presumably someone that would leave the inference that he was a Post Office Inspector—had called on Mr. Shove. It is my opinion, that these fellows are not what they represent themselves to be. But if they are Post Office inspectors, then it would appear that some order had been issued—evidently from headquarters—to try to catch the Rialto Company in a trap. This they cannot do by any honest methods, nor is the matter one of much consequence, except we would like to know if we are being investigated in this manner.

I call your attention to it merely as a matter for your own information.

I have just returned from a consultation with Judge Krum. He had a copy of the indictment, and we considered the same, and both feel that the case against Dennis and Garland will be taken from the Jury. Up to the present time, I have found no authority to sustain the Government's position, nor do I see how they can make a case against either Dennis or Garland.

Today's mails have brought in a number of letters enclosing newspaper clippings, but most of the letters are very fair, and if the situation gets no worse than it now appears, the Rialto

Company will have but little trouble in getting through with the situation. Will keep you fully informed.

Yours very truly,
(Signed) THOS. B. HARLAN.

P. S. Bowman represented that he was connected with Philadelphia office.

T. H. B. E. E.

192 Counsel for the Government offered the letter of Feb. 11, 1903, addressed to Thomas B. Harlan and signed J. R. Burton.

Judge Krum: We object to this letter, if the court please for the reasons indicated heretofore, and in addition that the letter does not appear to relate to any matter which is the subject of inquiry here before the court, and it is not improper for me to indicate to your Honor that not only does the letter apparently not refer to any matter before the court, but it does not in fact refer to any such matter. It relates to an effort to have Mr. Dice, who had in his possession the books of the Brooks Brokerage Company, turn them over to Mr. Dennis, after the trial of the Dennis case. Your Honor remembers what those books were, as they were used in court here. After the disposition of that case, the proposition on the part of Mr. Dice was to turn those books over to the State authorities, and an effort was made to have him turn them back to Major Dennis, to whom they belonged, instead of the State authorities, and this letter relates to the efforts that were made in that direction. The letter does no refer to any matter that was being investigated by the post office department, in the sense of complaints, or anything of that kind, against the Rialto Company.

The Court: I will say again, so there may be no misunderstanding as to the view the court has in admitting this testimony, that the letters, telegrams,—this letter among others,—are admitted to go to the jury, to show the relations existing between the defendant in this case and the Rialto Grain and Securities company, with the view of aiding the jury in the determination of the situation which was stated by counsel in their opening, as to what his true relation was. Whether his relation was aiding, assisting, and rendering service before the department, or whether his relation was entirely exclusive of that; and for the purpose of acting as general counsel
193 upon the situation. That is the sole ground upon which this letter, and other letters, have been admitted. As to this letter, inasmuch as it bears upon his relations to the Company, and his services rendered, that objection is overruled.

To which ruling by the court the defendant, by his counsel, then and there duly excepted.

Counsel for the Government here read the letter of Feb. 11, 1903, addressed to Thomas B. Harlan, and signed J. R. Burton, which letter is in words and figures as follows, to-wit:

United States Senate
Committee on
Forest Reservation and the
Protection of Game.

Feb. 11, 1903.

Mr. Thomas B. Harlan,
St. Louis, Mo.

My Dear Harlan:

I have your telegram telling me that things were satisfactory between you and Dice. I hope you are not letting him mislead you in any way.

I will be in St. Louis the fore part of next month, so soon as Congress adjourns, and shall aim to remain several days.

Be sure and keep me advised if there is anything to do at this end of the line before going away. I have tried to keep the department in a good humor with Major Dennis, and think I have succeeded.

If agreeable, on receipt of this, I wish you would have my month's pay send in, so I can reach it by Monday next.

Faithfully yours,
J. R. BURTON.

194 W. E. Cockran recalled, having been heretofore duly sworn, testified as follows:

Direct Examination

By Col. Dyer:

Q. You have been sworn in this case? A. Yes sir.

Q. And your name has been given to the jury? A. Yes sir.

Q. I will get you to state, Mr. Cochran, whether, at any time between the 18th of November, 1902, and the 26th day of March, 1903, you saw the defendant, Senator Burton, at the Post Office Department in Washington? A. Yes sir, I did.

Q. Will you state to the jury the first time that you saw him there when any allusion, if any such was made, was made to you in reference to the Rialto Grain and Securities Company? A. I cannot fix the date of the first visit from any independent recollection; but my best recollection is that the first visit was made before that case had been sent out for investigation.

Q. Do you recall any visit that was made to the department in reference to the complaints of Hout and Evans, and whether you gave him any information as to the pendency of those complaints? A. Yes, sir, he called at the department sometime after the case had been made up, and I told him that the case

had been made up and sent out for investigation, and gave him the names of the complainants.

Q. Was that the first visit to the department in reference to the matter, or had he been there before? A. I stated that my recollection was that he had made a visit of inquiry before any case had been made up and sent out for investigation.

Q. Can you state what he said, in that inquiry, substantially?

195 *Judge Krum: I submit that is* not material in this case; that was before anything had been begun, on the theory of the Government.

Objection sustained.

Col. Dyer: Q. What transpired at this interview, when you told him of the complaints of Hout and Evans, and the case being made up against the company, any further than that? A. He said that all the difficulty arose from Major Dennis's connection with the Brook Brokerage and Commission Company. I will have to correct that—that all the trouble arose from that company, and that Maj. Dennis had succeeded and formed a new company which had taken over the business of the old company.

Q. What, if anything did he say with reference to the Rialto Grain and Securities Company that had been organized after the Brooks Brokerage Company had been organized? A. He said that Company was doing a straight business and was all right.

Q. After you gave him this information as to the complaints of Hout and Evans, when and where did you next see him, if at all, in reference to the matter of the Rialto Grain and Securities Company? A. I saw him again at the department, but I could not fix the date, only he made an inquiry whether certain persons who claimed to be inspectors were inspectors, and I gave him the information that the persons whose names he gave me were not inspectors.

Q. Do you recollect whether in that inquiry a man by the name of Bowman was mentioned as one? A. I could not recollect that, from my own recollection.

Q. What was his inquiry and what did he say in reference to the matter, at the time he made this inquiry? A. Well, he wanted to know if such persons were inspectors and if they were investigating this case.

196 Q. Was that substantially all that occurred? A. I think so, yes sir.

Q. When was the next time you saw him to talk to him in reference to the matter? A. The next visit that I recall was about the 24th of January, 1903.

Q. May I refresh you a little on that, probably, by asking you this question: Did you see him at the department in company with Maj. Dennis, in December, before? A. Yes sir, I did.

Q. Now you may state, have you any definite recollection as to the date of that visit? A. Only the nearest approach I could make to the date was that it was after the indictment and the arrest of the officers of the Rialto Grain and Securities Company.

Judge Krum: Q. You mean of the Brooks Brokerage Company.

Col. Dyer: Q. Including Maj. Dennis? A. Yes sir.

Q. Will you state to the jury what he said to you at that time and upon that occasion? A. Well, he said first that he wanted me to see Maj. Dennis and see what kind of looking man he was, and he repeated the assurance that his company was endeavoring to do a straight business, and also the former statement that all the troubles arose from the conduct of the Books Brokerage and Commission Company.

Q. Was that the first time you ever had seen Maj. Dennis? A. Yes sir.

Q. Were you introduced to him by the Senator? A. I was.

Q. Now, what else was said in that interview, if anything? A. I do not recall anything except the general statement that they did not wish to antagonize the department, and that they wanted to do just exactly as the department wanted them to do.

Q. In what respect, did they say? A. In the con-
197 duct of the business of the company.

Q. Was there anything said in reference to conforming to the rules of the department as to the kind of literature that should be sent out through the mails at that time? A. No sir, I do not recall any such statement.

Q. When, after that did you see him next? A. About the 24th of January, 1903.

Q. State where you saw him then? A. At my office in the department.

Q. What occurred at that time, and what was said? A. He stated that Mr. Dice had taken a book or the record that had been turned over to him in the investigation of the case in the United States Court, and that after that case had been thrown out, he was taking them over to the State courts for use here. And he said that those records had been surrendered voluntarily and it was a breach of faith on the part of Mr. Dice to make that use of them. And he asked that Mr. Dice be ordered to return the books.

Q. What was said by you and him any further? A. I told him that Mr. Harlan who was the person who wanted the books back should see the United States attorney, and Mr.

Dice would be governed entirely by whatever instructions he might give. But the Senator insisted that something ought to be done about the matter, and at my suggestion we went to see the 4th Assistant Post Master General, and the case was stated to him.

Q. State what occurred between the 4th Assistant Post Master General and Mr. Burton and yourself on that occasion when you got there? A. There was practically the same statement that was made to me and the same request; that Mr. Dice be ordered to return the books.

Judge Krum: Q. These were the books of the Brooks Brokerage and Commission Company, weren't they? A. I think so. Of course I never saw them. But it was a book that had been surrendered to Mr. Dice, in the investigation that he made.

Judge Krum: That is a fact, isn't it Col. Dyer, that it was a book of the Brooks Brokerage and Commission Company?

Col. Dyer: That is true.

198 Q. What was said further by the 4th Assistant Post Master General? A. The 4th Assistant Post Master General also declined to say that the order would be given. Then, my recollection is, we all three went to the Post Master General and the case was submitted to him. The Post Master General, after considering the matter, directed me to send a telegram to Mr. Dice.

Q. After the conversation had with Senator Burton and yourself and the 4th Assistant Post Master General? A. Yes sir.

Q. I show you a message and ask you whether that is the message that was sent to Mr. Dice after your visit to the Post Master General in company with Senator Burton? A. (After examining paper) It is.

Q. That is the dispatch you sent? A. Yes sir it is.

Q. According to the direction of the Post Master General after the visit and the conversation had there in reference to this matter, between the 4th Assistant Post Master General, yourself, the Post Master General and Senator Burton? A. Yes sir.

Q. This dispatch seems to have your name as the inspector; by whom was this dictated? A. By the Post Master General.

Col. Dyer: I offer to read that dispatch.

Judge Krum: It is obvious, your honor, that this telegram does not relate to any matter involved here, and accordingly we object to it.

Col. Dyer: This shows, as has already been shown in the course of this trial and by these papers, that this matter of the trial of Dennis, was over long before this dispatch was

sent, and it is offered for the purpose of showing the continuing relations that existed between this defendant and Dennis, who was the President of the Rialto Grain and Securities company.

Judge Krum: There is no dispute at all about that, but we submit that whatever occurred,—Now, Mr. Cochran has
199 explained what occurred in reference to these books. Your Honor has observed from the testimony they were the books of the Brooks Brokerage Company. What was contained in those books did not concern the Rialto Grain and Securities Company at all. The books were used in evidence here before your Honor, as your Honor recalls, and after the trial of Garland and Dennis, there was no further occasion for the retention of those books by any of the officers of the Government, and this testimony merely goes to show that Mr. Burton, acting for the Rialto Company, if you please, as he undoubtedly did, sought to have those books returned to Maj. Dennis. Now, there was nothing done by the defendant in that regard which would involve any culpability with reference to the charge upon which the defendant is now on trial.

Objection sustained.

Col. Dyer: Q. When, after that visit to the Post Master General, did you next see Senator Burton? A. On the evening of the 5th of February, 1903.

Q. Where did you see him? A. At his office in the Senate Annex, in the Maltby building.

Q. How did you come to meet the Senator there? A. The Senator's Secretary, Col. Smith, telephoned me in the course of the afternoon, saying the Senator would like to see me, and asked if I would not call at his office on my way home. The Maltby building is about half way between the department and my house, and I did call on him.

Q. Will you state, as nearly as you can, all that was said on that occasion in reference to the Rialto Grain and Securities company? A. The Senator either showed or read me a telegram from Mr. Harlan, stating that they had not got possession of this book or books, and that Col. Dyer had stated he had no further use for them, and the Senator again said that if that was the case, they ought to be returned, that Mr. Dice was
200 acting in bad faith in insisting upon keeping the books. I promised to send a telegram of inquiry the next morning, and I did send one.

Q. What else occurred in that interview? A. After that matter was settled the Senator said to me "Cochran, I want to appear in this and other cases before the department but I want it understood that in so doing I shall never antagonize the department, and my efforts shall rather be used the other way".

He said he could make some money in that way and apply it on old debts? That he had lost very heavily during the panic and that he had paid in—I cannot tell exactly in what time, but my recollection in during his term as senator—$70,000 on which he was not legally liable, but that if there was any just claim against him he would never plead the statute as a defense.

Q. What else was said there in that conversation? A. He said there was not anything wrong about this. That a number of senators, notably Senator Edmunds, had very materially increased his income by such practice and that it was all right.

Q. Was that substantially all that took place there at that time? A. Nearly all, I think so.

Q. What if anything, was said by him in that conversation with you, that when he overstepped the bounds, what was to be done? A. He asked me to warn him.

Q. What case, or cases did he say he would like to represent before the department? A. Well, he said in this and other cases. The case we had been discussing was that of the Rialto Grain and Securities Company, as I understood it.

Q. Did he mention any other case in which he would like to appear? A. No sir.

Q. After that time, did you have any further meeting or conversation with him in reference to the Rialto Grain and Securities Company? A. I do not recall any other until after the indictment was returned against the Senator.

201 Q. Then, after this indictment was returned against him, did you have any conversation with him in reference to the matter? A. Yes sir, I did.

Q. State what that was? A. On the afternoon of the day it became public, Col. Smith came down to the department and asked me if I would not call on the Senator that evening.

Q. Col. Smith is the senator's secretary? A. Yes sir. I told him I would, and I did call on the Senator in company with Inspector Vickery of Cincinnati. The senator asked me if Mr. Vickery was Post Office inspector, and I told him he was? He said he was glad I brought him along, because he wanted to talk over the matter with me. I said to him, "First, Senator, I think it is only fair that I should say to you that I have been a witness before the grand jury and that I shall be a witness against you if this case comes to trial, and in addition to the official proprieties, I having been sworn to secrecy, I thought I could not discuss the case with him. He said, nevertheless he wanted to recite to me what his recollection was of what had occurred—he stated that his memory was good. He went on to say that whatever he had done had been done as an attorney for the company; that he had no idea that he had in any way committed any impropriety in visiting the department on matters of this kind; that he had visited the Pension department

a number of times; and that if it was wrong for him to go and see a department officer in regard to a matter he didn't know it, and if it was wrong he would not do it any more. He said he had consulted with Senator Platt, of Connecticut and taken his advice as to whether it was wrong for him to appear in such matters, and the senator had assured him there was no impropriety in doing that. He also went on to say that he could not imagine what section of the law he could possibly have violated and asked me. I told him I had not seen the indictment, but my understanding was that it was based on section 1782 of the Revised Statutes of the United States. He asked me what that was, and I told him it was very comprehensive in its
202 terms, and I could not undertake to recite it, but that as I recollected it, in general terms it made it an offense for a senator or member of congress to practice before the department. And he said he had not been practicing before the department.

Q. Was anything further said at that time? A. I think that was substantially all of it.

Q. When, after that time, had you any further conversation with him in reference to the matter? A. No, sir, I had none.

Q. There was one question I intended to ask you before while you were on the stand, in reference to your authority in these matters while this case was pending, under the rules and regulations of the department and the authority conferred upon you by the rules and regulations, and by reason of your official position; I think you stated that you had authority to discontinue this examination if you saw proper, and also direct Col. Col. Dice to, that is true? A. Yes, sir.

Q. Then, by the same authority could you have taken the case out of one inspector's hands and placed it in anothers? A. Yes, I could have done so.

Cross-Examination

By Judge Krum:

Q. This last interview before the indictment was, as I understand you, in February? A. February, 1903.

Q. And on what date in February? A. The 5th.

Q. That was the first time, wasn't it, that Senator Burton made the inquiry of you of the description you have given here. That is, the first time that the subject of his representing or appearing for the Rialto Grain and Securities company was mentioned? A. Yes, sir.

Q. And that was the only time, was it? A. Yes, sir, the only time—well, except the last.

203 Q. I mean, before the indictment? A. Yes sir.

Q. Now you say he stated after the indictment, that he had been practicing in the department? A. No sir, I didn't say that.

Q. Then I misunderstood you. A. He said he wanted to appear before the department in this and other cases.

Q. But I mean after the indictment, what was the statement he made to you? A. He said he had appeared before the department as an attorney and everything he had done had been done as an attorney of the company. After I had stated what I thought was the substance of section 7182, he said he had not been practicing before the department.

Q. Then I misunderstood you? A. Yes sir.

Q. At any time from the beginning of Senator Burton's indication to you that he had any connection with the Rialto Grain and Securities Company, there was no discussion between you and him, was there, as to the issuance or non issuance of a fraud order as it is called, against the company? A. I think not.

Q. This interview on the 5th of February, as I understand you, related, for the most part, to this controversy about the books of the Brooks Brokerage Company? A. Yes sir, that is what the senator wanted to see me about.

Q. I understand you, then, that you are not able to recall any occasion upon which the senator made any representation to you or had any conversation with you with reference to the issuance of a fraud order? A. No sir.

Q. I understood you correctly, didn't I, Mr. Cochran, that at the time of Senator Burton's first inquiry, that is in regard to these two letters from the ladies in Albany, Mrs. Hout and the other one, those letters had already been referred in the course of the business in the department, to St. Louis,
204 and were in the hands of the inspector here. Was that correct, or hadn't that happened at that time? A. No sir, I stated my best recollection was that the senator had made inquiry before any complaint whatever had been received.

Q. I know. But the inquiry he made after the complaints were in, was made after those complaints had been sent out to St. Louis? A. Yes sir.

Q. So they were not pending before you, or pending before any officer of the Post Office department in Washington? A. Well, they were in the hands of the inspector in charge at St. Louis.

Q. That is what I mean, they were out here? A. Yes sir.

Q. The senator, therefore, was not shown those letters upon the occasion of his visit to your office for the purpose of that inquiry because they were here, and of course would not be shown to him in Washington? A. No sir. The only informa-

tion I could give him was the carbon, which would simply have on it the name of the complainants.

Q. You could give him that information and that was all the information you could give him there? A. Yes sir.

Q. There was no discussion between you was there, on this occasion, of the merits of the representations of Mrs. Evans or Mrs. Hout? A. No sir.

Q. The only thing that was indicated to the senator by yourself was, that, as appeared by this wrapper, these two complaints had been filed and had been referred to the proper officer in St. Louis? A. Yes sir.

Q. It is a fact, isn't it, as you recall, this occasion when Senator was advised of these two complaints, was the only one upon which he was advised of any complaints having been lodged against the company? A. That is my recollection of the matter.

205 Q. At any of these interviews between Senator Burton and yourself prior to the indictment, did he indicate to you that he would not undertake to appear in the department as against the United States? A. He did.

Q. Are you able to recall on which occasion that occurred? A. Why, I cannot with any certainty. The senator told me that several times.

Q. Disclaimed, whenever the occasion arose, didn't he, any purpose or intention to appear there against the United States? A. I think he did, yes sir.

Q. Do you recall his having indicated that so far from desiring to appear as against the United States, if an occasion arose when summary action was necessary that he did not even ask to be notified with reference to it. A. No sir, I cannot [quire] recall that. He did say, however, that he would not antagonize the department, no matter whether he thought they were right or wrong or not, that even if he thought the position taken by the department were wrong, even then he would not oppose them.

Q. This wrapper shows that on the 8th of November, 1902, a complaint was filed by F. R. Fravel: That fact was not called to the attention of Senator Burton, to your knowledge, was it? A. I do not think so. If I might explain how the information was probably secured?

Q. Yes, certainly. A. Instead of going down to the record myself, I probably asked my secretary to go and see whether there was a case, and get the names of the complainants, and he probably would simply take down those on whose complaints the case was made up.

Q. What I want to get at is the fact whether or not these complaints, other than those of the two Albany women, were called to the attention of the Senator? A. My best judg-
206 ment would be that they were not. I have no recollection of that.

Q. And that would cover the complaint of Arthur M. Allen of January 5, 1903, and S. A. Warner, that is the Pittsfield lady, of January 21, 1903; those are all that have been introduced here. That would cover all of those? A. Yes sir.

Redirect Examination

By Col. Dyer:

Q. On this talk that you had with him, in which he said he would not antagonize the department, how many times was that repeated to you, that he would not antagonize the department? A. You mean on how many different occasions?

Q. Yes. A. Well, I should say possibly three times.

Q. I do not know that you answered fully in your first inquiry, on your direct examination, and I will ask the question now: What statements, if any, other than those you have already given, did he make in reference to Major Dennis, and the character of the man? A. I cannot recall any particular statements that he made with reference to him, except those in connection with Mr. Brooks.

Q. What did he say to you in reference to the character of Dennis, if anything? A. He said Dennis was all right and was trying to do a straight business.

W. W. Chatterton, a witness of lawful age, produced, sworn and examined on the part of the United States, testified as follows:

Direct Examination

By Col. D. P. Dyer:

Q. What is your name? A. W. W. Chatterton.

Q. Where do you live? A. Washington, D. C.

Q. What is your position at Washington? A. Private Secretary to Mr. Cochran, Chief Post Office Inspector.

207 Q. I will get you to state whether you were present in the office of the Chief Post Office Inspector in December, 1902, when Senator Burton introduced Major Dennis? A. I was, yes sir.

Q. Can you state to the jury when they came in what, if anything, did Senator Burton say as to Major Dennis to the Chief Inspector? A. Well, he called attention to Major Dennis's personal appearance, that is, he said he wanted him to see what a fine looking man Major Dennis was.

Q. Do you recollect the date of that visit? A. I fix that on the 16th day of December, about the middle.

Q. About the middle of that month? A. Yes sir, 1902.

Q. Do you recall anything else that occurred there at that particular time? A. I do not know.

Q. Your desk in the office there was how far remote from that of the Chief Inspector? A. The desk itself is about two feet, but Mr. Cochran's seat is about eight or ten feet.

Q. How long did you remain there at that time, in the office? A. That I do not recall.

Q. You do not recall that? A. No sir.

Q. Did you see Senator Burton in the office of the Chief Inspector at any time before or after the middle of December, 1902? A. I saw him after that, yes sir.

Q. How often did you see him in the inspector's office after the middle of December? A. Well, he was in a great deal, but I only recall one particular time.

Q. What time was that? A. That was in January, January 24.

Q. Do you recall what occurred at that interview? A. I did not hear the interview itself.

Q. Well, what became of him after that interview? A. Senator Burton called and saw the Chief Inspector. I did not hear the interview. Then they went upstairs,—where, at that time, of course, I did not know, but afterwards—

Q. You learned afterwards where they had gone?

Judge Krum: From whom?

Col. Dyer: Q. Do not state where you learned it. I
208 do not ask you to state who told you; but they left the office together? A. Yes sir.

Q. But where they went, you did not know? A. I did not know at that time.

Q. You have no personal knowledge of where they went after they left there? A. No sir, no personal knowledge.

(No cross-examination.)

W. J. Vickery, a witness of lawful age, called, sworn and examined on the part of the United States, testified as follows:

Direct Examination

By Col. D. P. Dyer.

Q. State your name in full? A. William J. Vickery.

Q. Where do you live? A. I live at Evansville, Indiana, stationed at Cincinnati, Ohio, as Post Office Inspector in charge.

Q. How long have you been post office inspector in charge at Cincinnati? A. About seven years, as I recall it.

Q. Do you know Senator Burton? A. I was introduced to him in January of this year.

Q. January of this year? A. Yes sir.

Q. Where? A. At Washington, at the Maltby Building, in his office.

Q. By whom were you introduced to him? A. By Mr. Cochran.

Q. Will you state your recollection of what occurred at that interview at the Maltby Building in January last, between Senator Burton and Mr. Cochran, and yourself? A. At Mr. Cochran's request, I went with him in the afternoon, I think, of January 23, perhaps about five o'clock, to the Maltby Building, and Senator Burton and Col. Smith, his secretary, were in the office at that time. Senator Burton told Mr. Cochran that he was anxious to know why or for what he had been indicted—the indictment had been published that day, I believe. Mr. Cochran said it would be improper for him to state, inasmuch as he had been a witness before the Grand Jury and would,
209 if a trial followed, be a witness again. The section of the Statutes was inquired about, and as I recall it, there was an uncertainty as to whether it was 1782 or the one preceding or the one following. No copy of the statutes was there, and a memorandum was made of the number. Mr. Cochran said the statute was a comprehensive one and he would not undertake to quote it, but in effect it prohibited a senator or member of congress from appearing before the department; that he could not say anything as to what the charges were. I think he also mentioned that the United States Attorney at St. Louis had his testimony and could make known whatever he thought proper of that. Then Mr. Burton said he desired to repeat before Mr. Cochran his recollection of what had occurred. He said that he had appeared for this Securities Company as the attorney; that he had always sought not to antagonize or bias the department, that he desired, rather, that his client should come into harmony with the rules of the department. He said he had visited other departments, and I think the Pension Department was mentioned; that he would not do it if he thought it improper. He mentioned consulting some one as to the propriety of this, and that he certainly would not do it if he thought it was anything wrong. He said he had been employed in this case as attorney; that he had met them at St. Louis on his way there to or from a session of congress; that he had received a fee from them, a good fee, that he was not a cheap attorney and would not accept service unless they could pay; that it was intended or expected that he might be here at some trial, but afterwards that had been abandoned, they having determined it was not necessary, and he did not come. He again repeated that idea that he did not seek to antagonize the department in his appearing before it, and that he would not undertake anything that he supposed was prohibited by the law.

210 Q. You say that in that interview he mentioned the securities company; was the Rialto Grain and Securities company mentioned? A. The word Rialto was used. Of course I was not familiar with the company before that time, but that name was mentioned, the Rialto Grain and Securities Company.

Q. What further was said, if anything, in reference to his being the attorney for the company at Washington? A. I think the words used by Mr. Cochran, as to practicing before the department, I recollect the Senator said at the close, or near the close of the interview, that he had not been practicing before the department. At the start he made the distinction that he appeared only as attorney for the company and was not seeking—he didn't say that in words—at any rate the distinction was made between seeking anything wrong for the company, or biasing or antagonizing the department in any way.

Q. Was that about all that took place? A. Practically all. There was some general conversation there, and I think perhaps an agreement on Mr. Cochran's part, that Senator Burton had several times mentioned the fact that he did not want to antagonize the department.

(No cross-examination)

Richard H. Lindsay, a witness of lawful age, called on the part of the United States, being first duly sworn, testified as follows:

Direct Examination

By Col. D. P. Dyer.

Q. State your name in full? A. Richard H. Lindsay.

Q. And your occupation? A. I am a Washington Newspaper correspondent.

Q. How long have you been at Washington as a newspaper correspondent? A. I have been there this last time about two or three years.

211 Q. For what papers do you correspond? A. The Kansas City Star and the Kansas City Times.

Q. Do you know Senator Burton? A. Yes sir, I do.

Q. I will get you to state whether you met him at Washington in January of this year after it was reported an indictment had been found? A. No sir, I did not meet him.

Q. You did not see him? A. I did not.

Q. Did you have any talk with him? A. I had a talk with him over the telephone.

Q. You had a conversation with him over the telephone? A. Yes sir.

Judge Krum: How did he know it was Senator Burton?

Col. Dyer: Q. You may state to the jury how you knew with whom you were talking? A. I heard there was a dispatch received, and saw it, stating that Senator Burton had been indicted in St. Louis. Of course I wanted to send whatever end there was of that to cover in Washington for my paper. I called up Senator Burton's office by telephone; he was in the Maltby Building and I was in my office—No, in the office just above mine. Someone in his office said the senator would answer the 'phone in a few minutes; he came in answer to the 'phone; I asked who it was, asked if it was Senator Burton; he replied that it was, and we had some little conversation over the telephone, I don't know what, of a trivial character, and then I told him I had seen this dispatch that he had been indicted in St. Louis, and he said yes, he received a dispatch, and that began our conversation about that.

Q. I will get you to state whether or not at that time you took dictation from Senator Burton in reference to the matter? A. Yes sir.

Q. I will show you this paper (handing witness a newspaper clipping), dated Washington, January 23, 1903,
212 and ask you to look at it?

Judge Krum: I submit, if the court please, that it is not competent to refer to this witness to this memorandum to enable him to state what he received from Senator Burton.

The Court: It may not be necessary to refresh his recollection at all.

Col. Dyer: Q. I show you this clipping from the Kansas City Star; I gave you the wrong one at first—

Judge Krum: See if he can get along without it.

Col. Dyer: Q. Can you give to the jury the conversation you had with Senator Burton at the time for that paper? A. I think I could give the tenor of it, I do not know that I could repeat his exact language. The senator said over the 'phone that he had received a dispatch from St. Louis saying that he had been indicted there, and he said that he didn't know exactly what it was all about; that he was not guilty of any wrong doing; that he was going to St. Louis as soon as he could and insist upon a trial, and he said it was in reference to the Rialto Grain and Securities company. I believe, and that the only connection he had with it was through Major Dennis, who was an old friend of his who had been indicted, and he was Major Dennis's attorney; that he had gone to the department to see Mr. Cochran, I believe he said, with Major Dennis, on an occasion, and he had told Mr. Cochran he had come there to see what charges there were against his client,

and he had insisted to Mr. Cochran that he came as an attorney and not as a senator, in regard to the matter.

Q. What did you say to him then when he said he went there as attorney for the company? A. I told him that as I understood the indictment in St. Louis, it was on the ground that he had appeared before the department as an attorney, and he said he had assured Mr. Cochran that he did not want to interfere with the government's affairs in any way, manner, shape or form—something to that effect.

213 Q. What else did he say in reference to being attorney for the Rialto Grain and Securities Company, if anything, and what he was to do as such attorney? A. I don't think he said anything in my conversation with him. That he was employed to defend Major Dennis, who was an old friend of his, as he put it.

Q. That that was the scope of his employment, to defend Major Dennis? A. Yes sir.

Q. And did he say to you in that conversation that Major Dennis had been indicted in St. Louis, and he was employed to defend him in that indictment? A. Yes sir.

Q. Is that substantially what occurred there, Mr. Lindsay, between him and you? A. Yes sir, I think it is.

Cross-Examination

By Judge Krum:

Q. There was not anything else you recognized the senator by except the sound of his voice? A. I thought I recognized his voice very clearly.

Redirect Examination

By Col. Dyer:

Q. State whether in that conversation he said anything about having asked the inspector in charge to notify him of any complaints against the company? A. I do not recall that.

Interview in The Kansas City Star.

Saturday, January 23.

What Mr. Burton Says.

Took the Fees, but Contends That he Was Acting Within His Rights.

Washington, Jan. 23.—Telegraphic word was received in Washington to-day that a federal Grand jury had returned an indictment against Senator Burton of Kansas. The

214 Senator said to-day that he took the fee and performed the services indicated in the telegraphic information, but he says the services were privileged, and were not of a kind prohibited by the statutes. The information which has been secured for the consideration of the grand jury by the inspectors of the Postoffice department and the investigators

for the Department of Justice, is that J. R. Burton, while serving in the United States Congress as senator from Kansas, accepted money from Major Hugh C. Dennis of St. Louis to pay him for services rendered in one of the federal departments in Washington.

Senator Burton says he will go at once to St. Louis and defend the case and has no doubt that he will be able to make it perfectly clear that there was no reason for bringing the indictment.

The information given to the grand jury was to the effect that the services rendered for the money paid was formed by going to W. E. Cochran, chief of postoffice inspectors in Washington. It was not represented in the United States Grand Jury that Burton succeeded in performing any services, or that he paid any bribes to any government employees, but that as a congressman he had received money in a case in which the government was interested.

Senator Burton's name became prominent in connection with the famous Rialto case, when the incorporators of this fraudulent grain commission concern were being tried by Judge Adams in St. Louis. This resulted in a fraud order being issued against the concern. The judge at that time said it was one of the most infamous cases that had ever been brought to his attention and he was sorry that his court could go no further. He recommended other action.

Prosecuting Attorney Folk at this time took an interest in the case and had all the facts looked up. These he brought to Washington and brought to the attention of President Roosevelt with the information that a prosecution would involve
United States Senator Burton. The President said that
215 the prosecution should be made no matter whom it involved. He sent him to Attorney General Knox with the direction that the Department of Justice be used in securing the necessary evidence and getting a federal indictment if one was warranted.

The Department of Justice sent the papers to the district attorney, Mr. Deyer, at St. Louis, with instructions that he co-operate with Mr. Folk in securing the testimony and an indictment if necessary.

In securing this testimony the inspectors for the Postoffice department and the investigators for the Department of Justice were used in getting the information for the grand jury. The result is the indictment, which was returned to-day.

Senator Burton received a dispatch this afternoon informing him that the indictment had been brought. He had hardly opened the message and digested its contents when he was asked for a statement for publication. He said:

"I deny in the most emphatic terms that I ever attempted to prevent an issue of a granted order or represented my client in any case pending before the department. Major Dennis had been indicted by the federal grand jury in St. Louis, and I was one of the lawyers who had been employed to defend him. I had gone on one occasion to St. Louis to consult with him and he had come on to Washington to talk to me. When he came to Washington he brought copies of the indictments. As his attorney I went to the Postoffice department and inquired of Mr. Cochran, chief postoffice inspector, whether there was any fraud order cases pending before the department in which Dennis was concerned.

"I stated in as direct language as I could in my conversation with Mr. Cochrane that I could not be employed to represent a client in any case where I would have to oppose the government in any shape, manner or form. But if there were any charges against my client I asked to be informed and requested him to let me know if any charges were subsequently brought.

I am going direct to St. Louis and am ready for trial
216 right at this time. I shall insist upon an immediate trial in full knowledge that I am not guilty of any wrong.

The Rialto Grain and Securities Company of St. Louis was the successor of Brook's Brokerage and Commission Company. In the old concern Charles H. Brook was the principal stockholder, having all but two shares of the $150,000 of stock. In May, 1902, the transfer of stock forming the Rialto Company took place. In this new company Hugh C. Dennis was the principal stockholder, also secretary and treasurer. Another member of the firm was Thomas H. Garland.

It was in the prosecuting of this commission firm for swindling its victims that Judge Adams said the managers should receive severer punishment than being deprived of the use of the mails. This resulted in action against one or more of the incorporators.

While this criminal action was pending Senator Burton came to Washington as the attorney of Hugh C. Dennis. He went to the chief inspector of the postoffice department and demanded the papers in the fraud order cases. He contended that inasmuch as a fraud order had been issued and that there was nothing pending against his client in the postoffice department that he should be allowed to have access to the papers, and in fact, that he should have possession of them. The department refused to give up the papers.

Joseph H. Aubere, a witness of lawful age, produced, sworn and examined on the part of the United States, testified as follows:

Direct Examination

By Col. D. P. Dyer:

Q. State your name in full? A. Joseph H. Aubere.

Q. And your position? A. Newspaper correspondent.

Q. Of what paper? A. The St. Louis Globe Democrat.

Q. Do you know Senator Burton? A. Yes sir.

Q. I will get you to state whether, on the 23d of January of this year you saw the senator after the report of an in-
217 dictment having been found against him? A. I cannot say as to the date, not the specific date. It was on the Saturday in which the indictment became known in Washington.

Q. As such correspondent, by looking at the paper, could you refresh your memory as to the time? A. Yes sir, because it would appear the day of the telegram.

Q. Look at this and state on what date it was you had the talk with him? A. (after examining newspaper clipping): This is January 23.

Q. I will get you to state whether or not at that time a statement was dictated to you by Senator Burton? A. Yes sir.

Q. Did you write it down at that time? A. No sir, I took notes on it.

Q. Did you submit the statement to him? [—] Well in this way, he came to my office to see it, and then I submitted it to him. I did not take it to him.

Q. He came to your office after you had seen him in the first place? A. Later in the same day.

Q. And before your message had got out of Washington to your paper here? A. Yes sir.

Q. Does your independent recollection of that interview enable you, without looking at the interview itself, to tell the exact words that were used in that interview? A. I would not want to.

Judge Krum: We do not see any objection, your honor, to reading this clipping, beginning with "dictated statement".

Col. Dyer: Q. I will ask you to look at that paper and see how much of that interview was submitted to Senator Burton before you sent it off. A. (referring to paper) It was all submitted from the words where I say "This is what he dictated"; that was the beginning of it, and I read to him that night down to the paragraph, which is my own language.

218 Senator Burton Denies Charges and Explains

Special Dispatch to the Globe-Democrat.

Washington, January 23.—It became known about the capitol early in the afternoon that Senator Ralph Burton of Kansas

had been indicted by the grand jury at St. Louis, and the information, imparted through press dispatches, created quite a stir. Senator Burton left the Senate chamber soon after the news came to him by telephone, and went to his office in the Maltby building, just across from the capitol grounds. There he received a number of telegrams and communicated with friends, both here and in the West. To those who saw him the Kansas senator protested his innocence most vehemently. He told them, that nothing could be proved against him and that he was ready to face his accusers. The news did not create as much surprise as might be imagined, as there has been frequent reports connecting his name with "get-rich-quick" concerns in St. Louis a number of times. Senator Burton has been asked about these things and entered general denials, asserting that there was no record and no information which would connect him in any but the most legitimate way with business transactions in the West. That these rumors have shaken the confidence felt by the Senator's colleagues in him is not denied. The afternoon papers here printed meager accounts of the indictment in St. Louis, and in the course of the publications it was asserted that checks had been traced to Senator Burton, signed by H. C. Dennis and W. G. Mahaney, in all amounting to $1400. The assertion was made in the publications that the amounts were paid to him for using his influence in Washington for the right to use the mails for the Rialto Grain and Commission Company. Senator Burton told his friends that it was true he had accepted checks from the men named, but that they were for legitimate expenses. One of these publications was handed to Senator Burton with a request that he make a statement as to the charges it contained, and this is what he dictated:

219 Dictated Statement.

"I was retained as counsel for Mr. Dennis during his trouble in the winter of 1892 and 1893. I became associated with Mr. Harlan, his local attorney, and other St. Louis counsel in a regular way, and upon the recommendation of mutual friends. I talked over the case with local counsel in St. Louis, and later Dennis came on here to Washington, bringing a copy of the indictment which had been found against him in St. Louis. I conferred with him about his case, and afterward went to St. Louis and conferred with his local counsel. While Dennis was here I went with him to the postoffice department and introduced him to Supt. Cochran, chief of the inspection service of the department. I told Mr. Cochran that Dennis had been indicted by the federal grand jury in St. Louis, and that I had examined into the case, and as far as I could see, I did not

believe that there was a case against him. I wanted to know if there had been any complaint entered against Dennis before the department, and I was told that there had not. I then told Mr. Cochran that, although I was Dennis' counsel, I could not be retained to oppose the department in this or any other matter, and would not do so. I told Mr. Cochran, and I believe he will bear me out in the statement, that both Mr. Dennis and his local counsel, Mr. Harlan, had advised me that Dennis proposed no violation of the federal law, nor would he oppose any order or wish of the department. This was done in the presence of Mr. Dennis, my client. I called at the department once or twice after that to inquire if any complaint had been lodged there against Dennis, and on those occasions repeated my previous statement that I was not there to oppose the wish, order or rule of the department in any shape, manner or form, nor to act as an attorney before the department for him. After consulting with local counsel in St. Louis, as already explained, when I was out there during the holidays, we agreed that as Congress was soon to reassemble, it was not necessary for me to remain in St. Louis in the trial of the case before the courts."

220 Defends His Course.

"But how about the passage of money to you, Senator"? was asked.

"The payment that Mr. Dennis made to me was because I was employed as counsel".

"The press reports use the name of Mahaney. What do you know of him?"

"Mahaney was associated with Dennis in business out there. They took hold of a concern which perhaps had not been run right, but I was told that they intended to run it as it should be. Mahaney was with Dennis when he came to Washington to consult me".

"Was there nothing incompatible with your duty as a United States Senator in your being employed as counsel for this company" was asked.

Senator Burton did not dodge the question, but promptly responded: "My acting for Mr. Dennis as an attorney was not incompatible or in conflict in any way with my official duties as a senator. I shall not meet this case on technicalities, but on its merits, and I am satisfied that the court and the officials and everybody will be convinced that I have not only not violated any law, but that I have not been guilty of even an impropriety."

Questions designed to bring out more specific information as to the payment of money to him by Dennis and Mahaney were met with the statement:

"Yes, I received a check for $500.00, and received as much as $1400. That is not all I received, but, of course, that is a matter of my private business, as it was the fee for legal services and I am no cheap lawyer".

Again, later in the evening, Senator Burton gave a statement, in which he said: "I say candidly that while I may not be entirely familiar with the laws governing the conduct of a United States senator, I have never tried, directly or indirectly,
221 to influence any department in any shape in this or any other case since I have been a United States senator. I have not violated any law, nor is it my intention to seek vindication by any technicality".

Coming to St. Louis.

Senator Burton declared his intention of going to St. Louis, and expects to leave here sometime to-morrow afternoon. He said that he intended to talk with friends and would, of course, be guided in part by their advice as to any further statement he might make or any action he might take. He indicated that it was his opinion that "a job" had been put up on him, but he would not make such a charge, as he did not know of such a thing and was not ready to talk of the features of his defense until after he was fully advised as to what the real situation was.

Q. Was there any change or alteration made in it at that time? A. Not by me.

Q. At whose suggestion—at his suggestion? A. Yes, sir.

Q. What alteration was made at that time, and what interlineation was made? A. I cannot tell only from memory, but I have an original copy of this, and if I could look at that I could tell exactly.

Q. You may look at that for the purpose of refreshing your memory. (Witness produces copy of interview). A. In the portion of the interview, what is in the printed part, next to the last sentence in the first paragraph, in about the first 300 words —it is in the next to the last sentence in the first paragraph. That sentence as I wrote it reads this way—

Judge Krum: Q. It is not a part of the dictated statement, is it? A. Yes; that is, the dictated statement was given to me in notes, and this is the way I transcribed my notes on the typewriter; it was taken in that sense.

222 Q. And what time did you first see him that day? A. It was between three and four o'clock in the afternoon.

Q. Then when was the next time you saw him, when this change was made? A. After nine o'clock in the evening.

Q. Show the change that was made at nine o'clock, from the interview he had given at three o'clock, if any?

Judge Krum: What difference does it make?

Mr. Lehman: It is a correction, and not a change.

Judge Krum: The defendant has suggested that they take this paper and read it as an interview.

The Court: Why don't you read the first of the interview and then tell what he did at nine o'clock.

Q. Read the interview, and then tell any change you made. **A.** (Reading).

Burton:

"I was retained as counsel for Mr. Dennis during his trouble in the winter of 1892 and 1893. I became associated with Mr. Harlan his local attorney and other St. Louis counsel in a regular way and upon the recommendation of mutual friends. I talked over the case with local counsel in St. Louis and later Dennis came on here to Washington bringing a copy of the indictment which had been found against him in St. Louis. I conferred with him about his case and afterward went to St. Louis and conferred with his local counsel. While Dennis was here I went with him to the Post Office Department and introduced him to Superintendent Cochran chief of the Inspection service of the department. I told Mr. Cochran that Dennis had been indicted by the Federal Grand Jury in St. Louis and that I had examined into the case and as far as I could see I did not believe there was a case against him. I wanted to know if there had been any complaint entered against Dennis before the department and I was told that there had not. I then told Mr. Cochran that although I was Dennis' counsel I could not be retained to oppose the department in this or any other matter and would not do so. I told Mr. Cochran, and I believe he will bear
223 me out in the statement, that both Mr. Dennis and his local counsel, Mr. Harlan, had advised me that Dennis proposed no violation of the Federal law nor would he oppose any order or wish of the department. This was done in the presence of Mr. Dennis my client. I called at the department once or twice after that to inquire if any complaint had been lodged there against Dennis and on those occasions repeated my previous statement that I was no there to oppose the wish, order (in pencil)
or rule (of the department) in (any) shape, manner or form (in pencil)
(nor to act as an attorney before the department for him).

"After consulting with local counsel in St. Louis, as already explained, when I was out there during the holidays, we agreed that as Congress was soon to reassemble it was not necessary for me to remain in St. Louis in the trial of the case before the courts." The last words are the ones where interlineation was made that evening.

Q. Go ahead and tell what interlin-ation was made that evening? A. (reading) "Nor to act as attorney before the department for him".

Q. You wrote that in that evening? A. Yes sir. (Witness continues reading) "Mahaney was with Dennis when he came to Washington to consult me"; I haven't that here, but I recollect that I had "Mahaney as well as Dennis was with me", and the senator said I was in error, that Mahaney was not with him; so I struck that out. There is a little more that we quoted in there, but I did not read that to him in the evening.

Q. I will get you to state what else was said in that interview, if anything, according to your recollection, that you have not already read? A. Well, I don't remember. When I first went in there we sat talking quite a while with the understanding that our conversation was—

Q. I don't ask you for any private talk with him about the matter, but I ask you whether that interview, as you have read it, embraced substantially what was said by him
224 at that time? A. It embraced all that he dictated to me for me to print.

Q. Embraced all that he authorized you to print? A. Yes, and all I read back to him.

Cross-Examination

By Judge Krum:

Q. Didn't the senator say there were other matters in that connection that he didn't care to discuss then but would discuss them with you later? A. He may have done so, but I do not recall anything but this.

W. E. Cochran recalled on the part of the United States, having been heretofore duly sworn, further testified as follows:

Direct Examination

By Col. D. P. Dyer:

Q. What time in the evening of January 23 was the interview between yourself and Senator Burton at the Maltby Building? A. Shortly after five o'clock in the afternoon.

Cross-Examination

By Judge Krum:

Q. Was anybody present? A. Yes sir.

Q. Do you remember about what time of the day it was when you had this talk on the 5th of February? A. Yes sir.

Q. When was that? A. It was about the same hour, probably half past five o'clock.

Q. Was that in the senator's office? A. Yes sir.

Q. And where was it at that time? A. In the Maltby building.

Q. Is that what is called the Senate Annex? A. Yes, sir.

Q. And in which room? A. I could not tell you.

Q. Was it upstairs, or on the ground floor? A. I think it was on the ground floor.

225 Q. Was anybody present besides yourself and Senator Burton? A. Not when we had that conversation. Col. Smith and a young lady had been there, but they had gone.

Hector C. McRae a witness of lawful age, produced, sworn and examined on the part of the United States, testified as follows:

Direct Examination

By Col. D. P. Dyer:

Q. Your name? A. Hector C. McRae.

Q. Were you at any time connected with the Rialto Grain and Securities Company? A. I was.

Q. State when? A. From October 20, 1902, until July, 1903.

Q. In what capacity were you connected with that company? A. I had charge of the bills and finances; I was comptroller.

Q. Do you know Senator Burton when you see him? A. Yes sir.

Q. When was the first time you ever met him? A. March 26, 1903.

Q. That was the first time you ever met him? A. Yes sir.

Q. Where? A. In the Rialto Grain and Securities Company office.

Q. State what occurred there, according to your recollection? A. I had some business in Mr. Mahaney's office. It was before lunch. I went in there, and Mr. Mahaney was there with Senator Burton; he introduced me to him, and said that the senator had tendered his resignation, that Senator Burton had severed his connection with the company, or words to that effect, and he had paid him up to date; that the senator had felt that he was not earning his fees, in view of the fact that there had been nothing doing for some time past and that everything had been cleaned up in the department; that there were no complaints whatever against

226 the Rialto Grain and Securities Company in the department at Washington. Mr. Mahaney, in introducing him, made most of these remarks.

Q. What you have given here as said by Senator Burton or by Mr. Mahaney was said in the presence of each other? A. Yes sir.

Q. Was that all you recollect about—recollect now, Mr. McRae, as having occurred at that time? A. Well, before leaving, or before breaking up, Senator Burton said he would give, or that he did give Mr. Mahaney his address, and that he was always at hand if the company required him again, and the question of a retaining fee was spoken of; but my memory regarding that is not very strong. I think that was a matter that was to be left, to be taken up later on.

Q. I will ask you to state what was said, if anything was said, by Senator Burton in reference to the matters of the Rialto Grain and Securities Company in the Postoffice department at Washington being wound up?

Judge Krum: We submit he has stated.

Col. Dyer: Q. State fully if there is anything more in the matter? A. He said that before leaving Washington, he had called at the department and there learned that there were no complaints against the Rialto Grain and Securities Company.

Q. Is that all that occurred there, as you now recollect it, sir? A. Yes sir.

Cross-Examination

By Judge Krum:

Q. Mr. McRea, the talking on this occasion was done for the most part by Mr. Mahaney, wasn't it? A. Yes sir.

Q. You say Senator Burton stated that he had been to the department before he left Washington and learned that there were no complaints against the company? A. Yes sir.

Q. You are not aware, are you, that this check which has been read here, and been referred to by the witnesses, shows pretty nearly half a bushel basket of them pending at
227 that time? A. I was not aware of that.

Q. You don't know anything about that? A. No sir.

Counsel for the Government offers a letter, dated January 19, 1903, addressed to Thomas B. Harlan, and signed J. R. Burton in evidence.

Counsel for the Government also offers in evidence the letter dated January 22, 1903, addressed to J. R. Burton, and signed Hugh C. Dennis.

Judge Krum: We object, as not competent upon the general theory of the defense.

The Court: I sustain the objection to this as surplusage as they simply relate to the sending of money, and the checks are in evidence, and there is no use to duplicate that.

Col. Dyer: I submit that in the letter I offer on what is attempted to be made an issue, the statement in the latter part of that letter has [consider] bearing.

Objection sustained.

Col. Dyer: I would like to have the indictment and the return on the indictment of Dennis so as to show when he was indicted and when the case was pending in this court, unless it be admitted that it was returned on the 29th of December.

Judge Krum: If you say that was the date, I will admit it.

The Court: The clerk will get the files, and that can be supplemented later.

Adjourned until Friday, March 25, 1904, at 10:00 o'clock a. m.

228 March 25, 1904, 10:00 o'clock a. m.

Court reconvened, pursuant to the foregoing adjournment.

Col. Dyer: I desire to offer formally the stipulation that was filed in this case. I do not believe it has been offered in the case, but I believe most of the facts stipulated have been referred to in the course of the examination; but lest something may have been omitted, I offer the stipulation.

Judge Krum: I do not understand, if the court please, that a stipulation is a piece of evidence in a case. It is resorted to in case any question arises as to the admissibility of a paper or evidence referred to in the stipulation.

The Court: There might be some facts mentioned in it. There is no harm in offering it, as it has already been twice considered in evidence.

The stipulation referred to was admitted in evidence and is in words and figures as follows to-wit: (See the same set out in full on page 99a)

Col. Dyer: I want to offer in evidence the date of the return to this court of an indictment against Hugh C. Dennis and Thomas B. Garland. The date of the filing is November 24, 1902.

The Court: These are offered in evidence for that purpose?

Col. Dyer: That is all, yes sir.

The endorsement on the back of the indictment referred to was admitted in evidence and is in words and figures as follows:

"No. 4772. United States District Court, Eastern Division, "Eastern District of Missouri. The United States vs. Hugh "C. Dennis and Thomas W. Garland. Indictments for viola-"tion of Sec. 5480. A True Bill. Robert McK. Jones, Fore-"man Grand Jury. Filed Nov. 24, 1902. Wm. Morgan, Clerk."

The Government here rested its case.

229 The defendant moves the Court to require the prosecution to elect upon which counts of the indictment it will farther proceed, and upon such allegation by the prosecution to direct a verdict for the defendant upon the counts abandoned.

As ground of said motion, the defendant shows that the evidence as to a service claimed to have been rendered in a matter in which the United States was interested, is limited to one transaction, and the various counts of the indictment apparently are designed to state the same offense in various ways, and not state separate and distinct offenses of the same kind.

At the close of the Government's case, the defendant asked the following instructions be given to the jury:

The Court directs the jury to return a verdict of not guilty as to count one of the indictment.

The Court directs the jury to return a verdict of not guilty as to count two of the indictment.

The Court directs the jury to return a verdict of not guilty as to count three of the indictment.

The Court directs the jury to return a verdict of not guilty as to count six of the indictment.

The Court directs the jury to return a verdict of not guilty as to count seven of the indictment.

The Court directs the jury to return a verdict of not guilty as to count eight of the indictment.

The Court directs the jury to return a verdict of not guilty as to count nine of the indictment.

Upon the evidence adduced, the court directs the jury to return a verdict of not guilty upon the indictment.

Which instructions were by the Court refused, and the defendant duly excepted at the time.

230 Judge Krum: The case of the Government being all in, the defendant moves the court to require the prosecution to elect upon which counts it will proceed further.

The Court: As far as the first three counts were concerned, they relate to one transaction, namely, the receipt of that sum of money here as it appears on March 26th.

The first count charges that it was received on that day as compensation for services rendered in a matter in which the United States was directly interested.

The next count is the same as the first, with the exception that it charges that the United States was indirectly interested. Now, considering the argument that was made before the court on the demurrer, it might be true that there is some difference in contemplation of the law between the direct interest and the indirect interest which the Government may have in matters pending before a department in the shape of an inquiry which is the subject matter in this case. I have held, and will, and do so state to the jury, that the Government is both directly and indirectly interested and shall submit both of these counts to the Jury so that a verdict may be rendered on either one of them, or both of them, in order that the question may then be passed upon, if counsel desire, on their motion in arrest, or on a demurrer as to whether there is any interest on the part of the United States in this matter, or whether that interest is direct or whether it is indirect. So both of these counts will be left to the jury, with the statement that the Government is directly interested, and indirectly interested, too.

The third count charges that this money was received from particular officers, instead of from the Rialto Grain and Securities Company or anybody representing it. This third count is the same as the first. There is no doubt about that, and there is no particular point in having that count go to the jury, or any verdict on that count. The whole question will be submitted on the first and second counts.

231 As to whether or not there shall be an election so far as the other counts art concerned, the court differs from counsel for defendant in this: That it is not one transaction within the meaning of Section 1782, which is involved in this case.

The gist of the offense, as has been mentioned by both counsel —and the court fully agrees with them—is the receipt of money; the receipt of compensation, the receipt of $500 at one time for services, if they were rendered, before the Post Office department, would constitute an offense in and of itself; so the receipt of another $500 would be an offense in and of itself. That is the view I take of it.

The motion to elect will be denied, with the understanding that so far as the third count is concerned, there should not be any verdict on that if there is a verdict on the other counts. That I will take care of later in the case.

Thereupon the defendant duly excepted at the time to this ruling of the court.

Judge Krum: Then the view of the court is that the counts which cover the receipt of checks, and the proceeds of these checks, state separate and distinct offenses?

The Court: Yes, I think so.

Whereupon the defendant, to maintain the issues upon his part, introduced the following evidence:

Thomas B. Harlan, a witness of lawful age, produced, sworn and examined on the part of the defendant, testified as follows:

Direct Examination

By Judge Chester Krum:

Q. What is your name? A. Thomas B. Harlan.

Q. What is your occupation? A. I practice law in the city of St. Louis.

Q. How long have you been a member of the bar here in St. Louis? A. Since October, 1892.

Q. Do you know the defendant, Senator Burton? A. 232 I do.

Q. When did you meet him for the first time? A. On the 17th of November, 1902.

Q. And where? A. I met him—he was in a carriage in front of the Rialto Building on 4th and Olive Streets in the City of St. Louis. I was introduced to him and got in the carriage.

Q. At that time had the Rialto Grain and Securities Company been organized? A. Yes, sir.

Q. Did you have anything to do with the organization of that company? A. Yes sir, I was consulted as to the legal phases pertaining to that matter and organized that company, consulting with you in the mean time.

Q. Who prepared the articles of association? A. They were prepared by me.

Q. What was the capitalization of the company? A. $25,000.

Q. Was that capital actually paid in, to your knowledge? A. It was, yes sir.

Col. Dyer: Before going into this matter—I do not want to ask about the company; I do not understand that I am here trying the Rialto Grain and Securities Company. I desire to say that this testimony where reference is made to the amount of the capitalization and as to whetner it was actually paid in or not is a matter immaterial to any issue in this case, and therefore I object to going into the history of the Rialto Grain and Securities Company. I do that lest I might, if I sat still, be put in the attitude of—if it was permitted and allowed with-

out objection—of being cut off in the end as to my inquiry as to the actual business carried on by that company. I interpose the objection now, to the end that I may know how far the Government may go back to show the real business of this concern and the purposes of the organization.

233 Judge Krum: The Government, if the court please, is at liberty and has been at liberty at any stage of this case, and at any time, as far as this defendant is concerned, or Major Dennis or Mr. Harlan, or anyone connected with the Rialto Grain and Securities Company, down to the time when Senator Burton's connection with the company ceased, to have the full exposition, if it is necessary, of the affairs of that concern. There never has been the slightest effort or intention to avoid any such inquiry. On the contrary, it has been invited.

Now, I do not propose to go into the details of the business of the Rialto Company, but I respectfully submit it is material in this case to show that from the very outset the corporation itself was not a myth; that what was called a corporation was actually a corporation. That is as far as I desire to go.

The Court: Of course it is understood and must be understood that it is immaterial for the purposes of this case, whether this company was in point of fact fraudulently conducting its business. The only thing necessary to know is that there was an inquiry pending in the department. Of course I cannot anticipate what the purposes of the defense is in asking a question.

Judge Krum: Q. Who, if you know, Mr. Harlan, at the time of Senator Burton's employment by the company, was its principal stockholder? A. Hugh C. Dennis.

Q. The gentleman who has been referred to here as Major Dennis? A. Yes sir, the same.

Q. What was his official relation, if any, with the company? A. He was president of the company.

Q. Do you know what his occupation was at the time when he organized this company? A. Well, at that time he had been connected with the Brooks Brokerage Commission Company for a brief period and was also the general agent
234 for the Hartford Life Insurance company, having, I think, the agency of three states at that time, Missouri, Kansas and Arkansas.

Q. He was connected with the Brooks Brokerage company? A. For a brief period, yes sir.

Q. When did that connection begin? A. That began sometime in June, 1902.

Q. And when did his connection with that company cease? A. Well, the affairs of that company were wound up in the early part of September, 1902.

Q. I will get you to state whether the organization of the Rialto Grain and Securities company was had for the purpose of merely transferring the business of the Brooks Brokerage company to a new concern, or whether it was organized upon an altogether independent basis as an original institution itself? A. It was organized upon an independent basis as an original institution, with great care, that the Brooks Brokerage company would not get mixed in with it.

Q. Were you in any relation yourself to the Rialto Grain and Securities company at the time when you met Mr. Burton? A. Yes sir, I was one of its counsel.

Q. Was it in that capacity that you were introduced to him and met him? A. Yes sir.

Q. What authorization, if any, did you have from Major Dennis, to act for this company, in meeting Senator Burton. A. Major Dennis had indicated to me that he wished to employ Senator Burton and asked me to meet him. That occurred about thirty minutes before I met Senator Burton, and, as I say, in about thirty minutes after that, Major Dennis came to me, I being then on the third floor of the Rialto Building, and asked me to come and meet Senator Burton, and ride to the Union Station with him, as he could not go, that is, that he, Dennis—

235 Q. That is that he, Dennis, could not go? A. Yes sir, that Dennis couldn't go. That is the method of how I happened to meet Senator Burton. We went downstairs.

Q. Did you go to the station with him? A. Yes sir, I got in the carriage with him, and Mr. Ernest Kastro was in the carriage with Senator Burton, and we drove to the Union Station. But in that brief time I had no opportunity to approach the questions that I desired to speak to him about, this matter of employing him as associate counsel, so I suggested I would go on to Chicago. We contemplated catching the Illinois Central train, but we missed that and took the Chicago and Alton midday train that left here at that time at about 10 minutes past 12. And I was with Senator Burton and Mr. Kastor from the time I got in the carriage on the train to Chicago, and at the Auditorium Annex, the hotel in Chicago, until about half past nine that evening, during which time we had all those conversations.

Judge Krum: Perhaps it would save time, your honor, if I asked Mr. Harlan to indicate, without specific questions from me, just what occurred on the journey to Chicago and in Chicago, if there was any conference there, with reference to this matter of employment.

The Court: You may take that course.

Q. I will, therefore, ask you, Mr. Harlan, to state to the jury all that occurred between Senator Burton and yourself, with reference to the matter of his employment by the Rialto Grain and Securities Company? A. As near as I can remember.

Q. Yes, just give us your best memory. A. Well, after we got on the train, we—

The Court: Q. You say this was November 18?

A. This was November 17th. We got on the train and after a few preliminaries, trying to get acquainted—I had
236 never met Senator Burton—we went into the dining car for lunch and while we were eating lunch, Senator Burton and I sitting on one side of the table, facing the locomotive and Mr. Kastor on the opposite side of the table, I broached the subject of his employment as counsel for the Rialto Grain and Securities Company. Now, I am not able to recall every detail, but I remember very distinctly going over with him in minute detail and at great length the controversy between Charles H. Brooks and Hugh C. Dennis growing out of the affairs of the Brooks Brokerage and Commission company. I explained to him how the Brooks company had been organized by a man of the name of Brooks, and conducted by a man of the name of Brooks, and how he, Dennis, had inadvertently fought Brooks interest, Brooks' trip to California, and his telegram back to Dennis, Brooks' return here with a lawyer, his employing two additional lawyers here in St. Louis, the great amount of litigation that had resulted from that—there had been 15 civil suits, something like 20 libel suits, one injunction, a service or something like—a notice under the special statute, of something like more than 200 other cases that might be brought; but which, on this particular date we had about cleaned up that situation. But as a result of this controversy, the matter, through Brooks in his fight on Dennis, had taken the papers procured by him, through, as I explained to Senator Burton, as false, or, if you will permit the term, a fake collection agency; and that he had turned those papers over to the post office department here and brought about an investigation of the affairs of the Brooks Brokerage and commission company, and on this date, the 17th day of November, that investigation had been, I think concluded, or about concluded. It extended over a considerable time, probably four weeks, this investigation—not every day, but working at it from time to time, during which period I had represented the interests of Major Dennis, and had always worked as his representative with the post office inspectors, with a view of seeing
237 that all information that they desired should be furnished and given to them; that being the explicit direc-

tion I had had from Maj. Dennis that everything should be turned over to the Post Office inspectors.

So we went over that at great length. It was apparent at that time—

Col. Dyer: State what was said, not what was apparent.

A. Well, I made this clear to Senator Burton that at that time there would be indictments, but there still remained the hope at that time that the indictments would be directed against Brocks and Walden, whom I considered the real guilty parties and that the Government would probably select Maj. Dennis as the prosecuting witness, we believing that one of the three would have to be selected.

That was the matter uppermost in my mind at that time, and I explained that to Senator Burton, as I say, in great detail so he might understand the controversy and the questions involved, just as I understood them.

Well, of course, going along, necessarily the conversation was punctured more or less with general subjects. I remember then we got to talking about railroads. The dishes had been cleared off, and I got to talking about the railroad situation in the west, I being interested in one railroad enterprise, and Senator Burton in another, and we drew maps on this table cloth indicating these different localities. That led me to explain to Senator Burton a phase of the Rialto Grain and Securities company which was then contemplated and had been carried pretty far; that is, a department to deal in what we term "promotion securities", and I used this railroad situation to illustrate that to Senator Burton in this way—I will tell it to you just as I did to him: Here is a railroad (indicating); Now, a trust company will underwrite bonds, but the difficulty with the trust company is in selling those bonds. The

238 Rialto Grain and Securities company had one of the best distributing plant that probably ever was established—this was all explained to Senator Burton—whereby they could get out 30,000 letters a day. They had, at great expense procured lists of investors, and this securities department contemplated being with the trust companies, on the one hand, soliciting these bonds that they would have for sale, and through this distributing department placed those securities before selected investors at the rate of 30,000 a day. This was a matter in which I felt a keen personal interest. It seems to me something that was needed, and, as far as I am concerned, I still have confidence in it. It interested Senator Burton very much. Using this railroad situation to explain it, and how it would apply to the railroads with which he and I were respectively interested. So that was explained to him.

I also explained to Senator Burton in that connection that it was then contemplated, the matter had then been talked over, to employ some one to represent the Rialto Grain and Securities in the east, preferably a lawyer, someone who could deal with the trust companies there, and indicated to him that in the event of his becoming counsel for the company, that he would probably be called upon, and in fact, would be called upon, to look after that feature of the business.

Well, after that matter had been gone over pretty thoroughly, and while we were still sitting at the table, and after I had explained—well, yes, I also entered into quite an elaborate explanation of the organization of the Rialto Grain and Securities company, its plan, as it differed from the Brooks Brokerage and Commission company, and that led to the discussion of the laws, state and federal applicable to the grain business, whether on the board of trade or off the board of trade, the legal questions are just the same. I went over the provisions of the state laws at that time, and that led to some considerable question and argument between us; at that time, by reason of this postoffice investigation, I was quite familiar
with the provisions of the federal law prohibiting the
239 use of the mails under certain circumstances, and the
adjudged cases under that statute. So I pointed out to Senator Burton just how the Rialto Grain and Securities company, under the plan they were operating and which we had advised they might safely use, would keep within the state law and the federal law. And I remember he asked me distinctly in that connection "how are you going to keep within the federal law". I answered "Simply by preventing any misrepresentation", and then I explained to him that in order there might never arise any difficulty in that respect, it was the practice of the Rialto Grain and Securities Company, and one of my duties as its counsel, to examine all of its advertising matter before it was sent out through the mail. A rule that was then faithfully observed, and always was observed to the best of my knowledge, certainly until after Mr. Burton ceased to be connected with the company. Well, that led to some considerable discussion about the law and the facts, which, however, Senator Burton took a position against me for the purpose of bringing out the points; but I satisfied him thoroughly that as long as this company followed my advice they never would have any trouble with the postal authorities, and they never did.

While we were still sitting at the table, and in that connection, though probably not immediately following—as I say, there were general matters coming in all the time, general conversation, a running conversation,—but Senator Burton

made this statement: He said "Now you must remember I am a United States senator", and with a degree of severity, he said "I am not going to do anything inconsistent with my duty as a United States senator",—and I thought more of him for stating it just that way.

Col. Dyer: You need not mind about your admiration.

A. Excuse me, Colonel. —I assured him I didn't want him, under any circumstances to do anything inconsistent with his position as United States senator, and I was just as
240 positive in my statement as he was in his declaration, as far as that matter was concerned.

Well, we went back into the smoking car. Up to this time nothing had been said about compensation. He had not even indicated, to the best of my recollection, a willingness—or indicated whether he would or would not become counsel. But we went back into the smoking car—just the three of us, there was no one else in the car. I brought up the question of compensation. I explained to Senator Burton that I did not feel that I had any authority to close any contract, but I would take the whole thing into consideration and report it back to the company when I returned to St. Louis. Well, after some playful points, Senator Burton said he would serve as counsel for $500 a month. That struck me as being reasonable, so much so that I did not dissent to it, all things considered. So it kind of drew off again, and then came back to that question. And he said "Of course I don't want to get cut off at the end of one month. For instance—Now, I am using his language as near as I can—"I don't want to go down there to St. Louis and try, or help you in the trial of that case, should there be an indictment, and have my salary cut off at the end of that month". So one or other of us, I don't remember which one of us, suggested five months. At any rate, whoever suggested it, that was acceptable.

Q. What, if any arrangement was made as to the times of payment; were they to be made in advance or at the close of the month? A. They were to be made in advance. The payments were all to be made in advance.

Q. Go on. A. Well, that is the general outline of the matter. By that time, we had about gotten to Chicago and we went into the hotel and spent the evening more socially than anything else.

Q. Was there any variation or change in the proposition and arrangement after you got to Chicago? A. No sir.
241 Q. You have now given us substantially the basis of the employment of Senator Burton as proposed by you and himself, have you? A. Yes sir.

Q. On your return to St. Louis, was the proposition submitted to Maj. Dennis? A. Yes sir. I returned to St. Louis that night, arriving here that morning. The previous day, on the 17th, Maj. Dennis had met with an automobile accident, and I did not see him until late in the afternoon of that day.

Q. But you did see him and submit that proposition to him? A. In a general way. I did not go into details.

Q. Was it accepted? A. He said "go ahead".

Q. Did you thereupon notify Senator Burton? A. I did.

Q. The letter is in evidence here in which you so informed him? A. Yes sir.

Q. Now, under what general designation was Senator Burton employed? A. Simply as counsel.

Q. Was anything said more particularly than you have indicated with reference to the postoffice department of the United States, or any of the departments of the United States? A. Well, I am just trying to recall. In this matter, where Senator Burton had asked me how I proposed to avoid any trouble with the federal authorities, and I explained to him about the statements, it seems the statements were always true—in that connection I did so explain to Senator Burton that the Post Office department had a standing invitation at all times to investigate this business.

Q. That is the Rialto Grain and Securities Company? A. Yes sir, the Rialto Grain and Securities company business; and that we would not only comply, or endeavor to comply with the statutory law on the subject, but also any ruling that might be made by the department.

242 Q. What I want to get at is this: Whether in this employment proposed to Senator Burton, was anything included as to services to be rendered in any departments of the United States government? A. There was nothing said about that specifically.

Q. On the other hand, wasn't that excluded, rather than included. It was not included at all, was it? A. I have given you his statement in regard to his position as United States senator, and as far as exclusive language goes, I do not remember. I do not want to say one way or the other. But I remember that very distinctly.

Q. What I want to get at is, was there any employment of him proposed to or accepted by him, in the department or any of the departments? A. No sir. The truth of the matter is, as I made it plain to him, I did not care anything about the Post Office department, as far as what they might or might not do.

Q. You mean by that you were not aware of the necessity of the employment of anybody in reference to the Post Office department? A. There absolutely was no necessity.

Q. Did you have anything to do with the sending to Senator Burton of a check in the month of November? A. Yes sir, I sent him his first check that is, I enclosed it in a letter I wrote, the check having been made out in the regular way.

Q. For what, and by reason of what was that sent? A. That was sent him in pursuance of this arrangement that I had made with him, that he should get $500 a month.

Q. There is a letter in evidence here of Nov. 20, 1902, addressed to you by Senator Burton, which concludes with this sentence; "In return, if agreeable, you may make remittance for my first months' pay." I will get you to state to the jury whether the remittance was made, was made by reason of that request, or by reason of the contract which had been made between the company and the senator? A. This re-

243 mittance was made in pursuance of the arrangement I had made with Senator Burton.

Q. I show you a letter, dated St. Louis, Nov. 22, 1902, purporting to be signed by you, and addressed to Senator Burton. Is that the letter you sent him? A. Yes sir, that is mine.

Judge Krum: I ask to read this letter in this connection.

Col. Dyer: This is no objection.

Counsel for defendant here read the letter, dated St. Louis Nov. 22, 1902, addressed to J. R. Burton, signed Thomas B. Harlan, which letter is in words and figures as follows:

Nov. 22, 1902.

Hon. J. R. Burton,
c/o Senate Chamber,
Washington, D. C.

My Dear Sir:—We have your favor of recent date, and contents noted. The claims that you referred to against the Rialto Grain & Securities Company, have been investigated by a Post Office Inspector connected with this Department, and he found the actions of our company to be all right, and, we are informed, made a report in favor of our Company relative to the same.

I now contemplate leaving here Monday night for Washington, and should, in due course, arrive there on Wednesday morning, and sometime during Wednesday will take the liberty of calling upon you if convenient to you.

Everything is running very nicely here, but as I hope to see you within a few days, I will wait until then to explain some matters that have come up since my last communication.

I enclose the Company's check for $500, as per agreement. This check should have been sent in my former communication, but I neglected to do so.

Hoping that I shall have the pleasure of a personal interview at an early date, I remain,

T. B. H. Yours very truly,

E. E. THOS. B. HARLAN.

Judge Krum: Q. The former communication to which referred, Mr. Harlan, in this letter, was the letter read in evidence here of November 18, 1902, wasn't it? A. Yes sir.

Q. Now, in that letter you say to the Senator "I don't know what reports have been sent to the Post Office at Wash-
244 ington, nor am I prepared to say that the Government intends to make a case against Major Dennis; but if you can find it convenient to inquire of these facts at the department, you will be able to perform for us a great service at this time". I will get you to state to the jury to what matter you have reference in that communication to Senator Burton? A. This whole letter pertains to—

Q. Directing your attention to this particular part of the letter, state to the jury to what that part of it had reference. A. That had reference to the Brooks matter.

Q. Did it have any reference, or was it intended by you to have any reference to any of the affairs of the Rialto company? A. None whatever.

Q. In response to that letter you received the letter of Senator Burton's of the 20th of November? A. Yes sir.

Q. Which indicates that two complaints had been lodged against the Rialto Grain and Securities Company? A. Yes sir.

Q. Now, at the time Senator Burton was employed by the Rialto Company, did you yourself know of these complaints which had been lodged against the Rialto Grain and Securities Company? A. Well, I am unable to say positively, whether I had or had not, Judge.

Q. When did you learn that they had been investigated here by the Inspector? A. Well, I learned of it the same day that the inspector paid a visit to the company's office.

Q. When was that? A. My impression was that that was later in the year, along in December, but I notice that the letter was referred to in my letter of the 22nd of November, so I am not able to fix the date further than to refer you to that letter of the 22nd.

Q. Who was the inspector? A. I was told that Mr. Price was down there.

Q. Did you see Mr. Price there yourself at that time?
245 A. No sir, I did not.

Q. Did you yourself go to Washington? A. Yes sir, I went to Washington.

Q. When was that? A. My recollection is I left here on the night of the 22nd of November. I am sure of that. I

think that was on Monday, and I got to Washington on Wednesday and got back here on Saturday night the 29th, on which day the capias had been served on Dennis and Garland.

Q. That is, at the time you left for Washington, Dennis and Garland had been indicted? A. No sir, not when I left for Washington; the day I returned they had been arrested, is my recollection.

Q. At the time you left for Washington they had not been indicted, as far as you knew? A. Not that I knew of.

Q. What was your purpose in going to Washington as far as Senator Burton was concerned? A. I went to Washington to see Senator Burton; he was counsel in this matter and I wanted to consult with him with the view of seeing whether he could suggest anything as a lawyer that we might or could do to prevent the indictment of Maj. Dennis.

Q. With reference to the Brooks Brokerage Company? A. That was all in reference to the Brooks Company.

Q. Did you take anything with you for the purposes of information for Senator Burton? A. Well, no, there was nothing to take.

Q. Did you confer with him in Washington in regard to the situation? A. I did.

Q. Now, on your return, you found, as I understood you, that Maj. Dennis and Mr. Garland, had been indicted? A. Yes sir.

Q. Was Senator Burton advised of that? A. He was.

Q. That indictment was returned on the 24th of November? You returned here when? A. On the 29th.

Q. When, if you remember, was Senator Burton here
246 after the indictment? A. Senator Burton was here after that indictment, I think on the 24th of December, Christmas eve, was my recollection.

Q. Was there any conference had with him in regard to the indictments here in St. Louis? A. Yes sir, there was.

Q. Where was that held? A. We held a conference at the office of the Rialto Grain and Securities company. Present, yourself, Senator Burton myself and Mr. Mahaney. And that conference lasted for probably three hours, and every phase of that case was carefully gone over.

Q. Mr. Mahaney has stated here that at that conference it was suggested that Senator Burton had better not appear in the case in this court, lest he might antagonize Mr. Dice. Was any such thing as that suggested by anybody? A. No, sir, I cannot imagine where Mr. Mahaney ever got such an impression.

Q. Did it occur, as a matter of fact? A. No sir, it never occurred.

Q. What, if you can recall, was the suggestion made with reference to Senator Burton's actual appearance in the case here? A. I contended that Senator Burton should appear. But you suggested that it would be a mistake to weight that case down with counsel, and I accepted your position in that matter, and it was concluded that Senator Burton would not appear.

Q. Was the indictment in all of its phases, and all of the facts that were assumed and known to be at the command of the government, considered and discussed at that conference? A. Fully.

Q. And as far as the Senator's actual appearance in the case was concerned, the result was reached, that you have indicated? A. Yes sir.

Q. Now, in the month of December, the payment which was made to Senator Burton you had nothing to do with,
247 had you? A. No sir.

Q. That was made by Major Dennis in Washington; what have you to do if anything with the payment that was made in January? A. Well, I discovered, along about, oh, sometime after the 15th of January, that Senator Burton's check had not been sent to him, and I called Major Dennis' attention to the fact. I was later informed that the check had been sent.

Q. Who directed the sending of that check? A. Well, as I say, I called attention to the fact that it had not been sent, and my understanding was that Maj. Dennis sent it.

Q. State to the jury, Mr. Harlan, why that check was sent to Senator Burton? Whether it was sent by reason of any service he had theretofore rendered in the department, or by reason of the contract which had been made with him. A. By reason of the contract.

Q. When Major Dennis went to Washington in the month of December, did he take anything with him in reference to the case which had been brought against him? A. Yes, Maj. Dennis informed me he wanted to go to Washington and consult with Senator Burton about his case; and at his request I prepared a statement of the facts and brief of the law, and Maj. Dennis took that and a copy of the indictment with him.

Q. Now, in the month of February a payment was made Senator Burton, did you have anything to do with that? A. I don't remember having anything to do with that.

Q. Did you have any knowledge at the time the payment was made to Senator Burton in St. Louis, in March? A. No sir. I did not know anything about that at the time.

Q. Take all those payments that were made; I will get you to state to the jury whether those were made by reason of

service, or services, which the senator had rendered in the department, or whether they were made by reason of the
248 contract which had been entered into by you for the company and himself? A. All made in pursuance of the contract.

Q. As I understand you, the terms of that contract were that these payments were to be made in advance? A. Yes sir.

Q. Coming back to the original contract with Senator Burton, I will get you to state to the jury whether the grain dealing part of the business of the company was gone into at all by way of explanation? A. Yes sir, it was. That was explained quite extensively, and it should be borne in mind in that connection that the Rialto Grain and Securities company was organized in September, and there had been no option period which expired up to that time. The first option ever dealt in by the Rialto Company was a December option. I talked with Senator Burton at this time in November, so those matters were all explained to him.

Q. To your knowledge, had the company at that time, made any arrangement with reference to handling grain? A. That had been talked over and about; the plans were under way for that, the idea being to buy a certain amount of cash grain, even contemplating putting in some elevators in the state, and probably going in to Kansas, the plan contemplated, so there would always be grain on hand for delivery.

Q. Had, in point of fact, any elevators at that time been secured? A. I don't remember as to that at all, Judge Krum. I don't remember any statement like that.

Q. When did Mai. Dennis leave St. Louis after his trial? A. He was acquitted, as I remember, on the 14th day of January, the 14th or the 16th—well, let me see—

The Court: Q. You were asked when he left for California? A. I was trying to recall about the date. It must have been about the 7th of Feb.

[Q.] Answer the questions. Do not precede it with discus-
sion.

249 Judge Krum: How long did he remain absent from St. Louis? A. He returned here on the 25th day of July, 1902.

Q. What was his condition when he left St. Louis? A. He had a total lapse of mind, apparently.

Q. Where did he go? A. They took him to California.

Q. Did you see him there? A. I saw him there the latter part of April, 1902.

Q. What was his condition at that time? A. He was recovering at that time.

Q. And returned here in July? A. Yes sir.

Q. On his return, did he resume his conduct of the company? A. On his return he did, yes sir.

Q. What did you do, Mr. Harlan, with the letters which you received from Senator Burton and which were in your possession at the time of the finding of this indictment against him? A. I turned them over to the government.

Q. When did you do that? A. I could not tell you the exact date. It was sometime after the return of the indictment, but I do not remember the exact date.

Q. Had you retained possession of them all the time down to the time when you turned them over to the government? A. Well, I believe I handed them to you to look at, you had them for a few days, and handed them back to me and I turned them over to the government.

Q. How did you come to turn them over to Col. Dyer? A. He requested them.

Q. At the time that request was made of you, in whose possession were they? A. They were in your possession.

Q. And on your application to me, I turned them over to you, and you turned them over to Col. Dyer, that is a fact? A. I believe, actually Col. Dyer spoke to me and you were coming up here, and he spoke to you and I went back to your office and you handed them to me and I brought them up here
250 to Col. Dyer.

Q. You were subpoenaed as a witness on behalf of the government? A. Yes sir, I was subpoenaed on behalf of the government.

Cross-Examination

By Col. Dyer:

Q. You were also a witness before the grand jury? A. Yes sir, that is, after the indictment.

Q. And before that grand jury these letters you referred to as having been given to me, were produced by you before the grand jury, or your attention was called to them before the grand jury? A. Yes sir, and I believe actually handed them to you in the grand jury room. That is my best recollection.

Q. Before bringing these letters to me, you had turned them over to Judge Krum? A. Judge Krum had them in his possession, yes sir.

Q. And with them were some other letters, weren't they? A. Not when they were turned over to Judge Krum. These letters you had are the same letters Judge Krum had at the time.

Q. Weren't there any other letters that you had in your possession from the defendant, that were delivered up to him by you, after the request for the production of these letters? A. Well, I had two or three letters that I had pertaining to a

personal matter between Senator Burton and me, which I delivered to him. But I do not think, colonel, that was after the request for them.

Q. What I want to know of you is, as to whether or not when you were requested to produce all the letters, you had before that time, at the defendant's request, delivered to him certain other letters that had been written to you by him? A. Before you made the request, I am pretty sure that was, but I

I don't remember whether there were two or three of

251 those letters returned to Senator Burton.

Q. After you were before the grand jury, did you ask Senator Burton to let you have back those letters that you had previously delivered to him? A. Yes sir, I told him that you wanted them.

Q. What did he say he had done with them? A. He said he had destroyed them.

Q. You never saw Senator Burton to know him until you met him on the 17th of November, on the sidewalk in front of the Rialto Building, had you? A. I never knew him before.

Q. Did you know at that time of the contemplated employment of Senator Burton? A. I knew from the very brief conversation I had with Major Dennis, that he desired to employ him.

Q. How long before you saw Senator Burton had Maj. Dennis told you he wanted to employ Senator Burton? A. Well, in a conversation previous to this day, some few days before, he told me he had an opportunity of employing a lawyer who was a United States senator, to be associated with Judge Krum and me, without mentioning any name on that occasion. I said all right. The next time it was mentioned, in which he mentioned Senator Burton's name, was on this 17th day of November, possibly thirty minutes before I met Senator Burton.

Q. Now, do you know how it was, and who brought it about, if it was brought about, the employment of Senator Burton. At whose suggestion was it made, if you know, by Maj. Dennis? A. I only know that from hearsay, if you want me to tell that.

Q. I want to know about the business of this company and I want to know how long before this interview you had with Senator Burton, the matter had been brought to your attention, and by whom? A. Of employing?

252 Q. —Senator Burton? A. I have given you just exactly what had occurred. It may have been three or four days or a week.

Q. Had you had any conversation with Mr. Kastor about that matter? A. None whatever.

Q. Did you learn from Mr. Kastor in that conversation you had in the carriage, with Senator Burton and Major Dennis, that Mr. Kastor had recommended the employment of Burton? A. I think Kastor told me that. I know I got that impression some way.

Q. How was it that Kastor happened to go along to Chicago with you? A. I will never be able to tell further than that he was there in the carriage.

Q. Was there any business between Burton and yourself that necessitated the presence of Kastor? A. None whatever.

Q. Did you know of any reason why Kastor went along with you and Burton that day? A. No sir.

Q. Was there anything said in that conversation between here and Chicago by Kastor, to you or Burton that Burton was acquainted with the proceedings before the Post Office department, by reason of his having connection with the Weltmer case? Was there anything said about that? A. I do not recall a single word about that Weltmer case. No sir, I do not even recall, that I had any knowledge of the Weltmer case at that time.

Q. When you were talking about this underwriting business and making the drawings of railroads and things of that sort on the table in the dining car, you said to Burton after explaining this addendum that was to be attached to this Rialto Company, that you would put such a thing in communication with thirty thousand people a day by mail, is
253 that true? A. That was the capacity of the distributing plant that the Rialto Grain and Security Company was then operating.

Q. When you talk about distributing plant, do you mean to include in the distributing plant the names of persons all over the United States whose names were had there at that office? Do you mean that; what did you mean by distributing plant? A. I mean he had a plant there capable of getting out and mailing 30,000 letters a day, necessarily to be addressed to separate persons.

Q. And did you tell him at the time that you had not only this plant that could write 30,000 letters a day and get out 30,000 letters a day, but he had a record of the names of persons all over the United States, to whom such letters might be addrseed? A. I think I did, yes, Colonel; certainly that would be natural.

Q. Now, I will get you to state whether this plant and this vast number of names that you mentioned to Burton in that connnection, whether those names had been secured partly through the Brooks Brokerage and Commission company, and

that that was a part of the assets of the Brooks company? A. I absolutely have no knowledge on that subject, even now.

Q. This conversation was had with Senator Burton on the 17th of November? A. Yes sir.

Q. This company was organized in the first days of September, this Rialto company? A. Yes sir.

Q. And you had been connected as Attorney for Dennis while he was conducting Brooks company hadn't you? A. Yes sir.

Q. So that you knew not only the business of the Rialto company, but you also knew the business of the Brooks company by reason of your connection with that? A. I knew it in a general way, Colonel.

254 Q. Did you know it so as to be able to tell the jury now whether this number of names of persons scattered all over the country were names that had been gathered by the Brooks Company, as well as additional names gathered by the Rialto Company? A. No sir, I do not. My advice to those people was, when the Rialto company was organized, not to permit one single asset in any shape, manner or form of the Brooks company to go into it. Now, I don't know whether they did or not.

Q. Well, then, how did you know when you told Senator Burton that this Rialto Grain and Securties company had a plant that could get out thirty-thousand letters a day, and had a list of individuals, to whom each of these letters might be addressed? A. I knew that from the statements made by different persons in the office.

Q. And did you question the statements made by the different persons in the office, that these lists had been made up during the administration of the Brooks company? A. I never heard a statement one way or the other on that.

Q. You say that in that conversation you told Senator Burton that you did not want to violate any laws of the United States; is that so? A. I made that perfectly plain to him, yes sir.

Q. And you told him that as to the literature that was being sent out by that brokerage company, over which the post office department might have control, that you would see to it that that literature was submitted to you before it was sent out? A. No sir, I didn't put it quite that way, colonel.

Q. How did you put it? A. I told him it was the policy of the company to submit that stuff to me. And a part of my duty as its counsel to examine it before it was sent out.

Q. Under your terms of his being counsel, without regard to the terms of the so-called contract that was made, did you feel authorized to call upon Senator Burton by reason
255 of his employment, to go to the post office department

and ask whether post office inspectors had been sent here, or whether any complaints were pending in the post office department against the Rialto company. Did you feel, under your understanding with Senator Burton, that you had a right to command his services in that regard, if you desired? A. Well, now, just let me answer the question fully. If a situation of that kind had arose, I have no doubt I would have called upon him, but I always treated Senator Burton in this way, that he would determine what he would and what he would not do.

Q. Certainly; but if you wanted the information as to whether a post office inspector had been sent out here to investigate the business of the Rialto company, you thought you had a right to ask Senator Burton to ascertain that fact for you, but to leave it to Senator Burton's own judgment as to whether or not he should make the request. A. If such a situation had arisen, I think just that situation would.

Q. If there were complaints lodged against the Rialto Grain and Securities company, under his terms of employment, under this employment you made of him, did you feel that you had a right to call upon him at Washington to go to the department and learn there whether complaints had been filed and the nature of such complaints, leaving it to his judgment as to whether he was to overstep the bounds of a senator or not? A. Well, now, just leave out this one expression—whether I thought I had a right to do it—I probably would have done it.

Q. You did do it, didn't you?

Judge Krum: You are asked whether you considered he was bound to respond, and you had a right to call upon him.

Col. Dyer: I am asking him about his understanding.

A. My understanding is expressed.

256 Mr. Lehmann: I submit the witness is entitled to answer the question fully.

The Court: I think counsel should let the cross examination go on, and let the witness answer fully.

Q. (Question read.) A. Now, it seems to me I can best answer that question by saying that if such a condition had arisen, I would undoubtedly have addressed an inquiry to Senator Burton, leaving it to him whether he would act upon it or not. I always regarded him as a senator, Col. Dyer, and I have respect for him as such.

Q. There is not any question about that. But I want to ask you whether or not in this conversation between here and Chicago with Senator Burton, in speaking about the business

of the Rialto Grain and Securities company, didn't he say to you this: "Then, if asked at the department, I am safe in saying that it is the purpose of the Rialto Grain and Securities company to comply with every rule and order of the department"? A. Yes sir, you are correct in that.

Q. What gave rise to this inquiry made of you by Senator Burton, that if he went to the department he was safe in saying so and so, and so and so? A. That I intended to include in my other examination, but I was cut off. That came along in connection with this discussion which grew out of my explanation of the operations of this company relative to 5480.

Q. That is in reference to the violation of the postal laws? A. Yes sir, in reference to the violation of the postal laws, section 5480. Now, it was in that connection. I am not able to connect one explanation directly with it, but it was in that, and I remember that very distinctly.

Q. You have said something about the conversation that took place at the time that Senator Burton was out here, that Mr. Mahaney referred to yesterday? A. A conference we had there on Christmas eve.

257 Q. You have stated in answer to a question put by Judge Krum as to what occurred at that interview and the reason why Senator Burton did not appear in the Dennis case; and you have stated that it was upon the suggestion of Judge Krum that it was not well to overload the case with lawyers, and it was not much of a fight anyhow. Substantially that was about it? A. I don't believe there was anything said about it being not much of a fight. But we contemplated winning out.

Q. I will ask you to repeat what were the reasons you gave at the time Mr. Mahaney was present, why Senator Burton should not appear? A. If you will notice Judge Krum's question did not call my attention to any particular time, but rather to the reasons. My recollection was just this: That that matter was not discussed at all at that conference, but it was taken up between Judge Krum and I at our conference following that, after Senator Burton had gone to Kansas, and I agreed with Judge Krum after he had stated his position, and reported the matter back to Senator Burton, or Major Dennis—it could not have been to Senator Burton, because he was not here. Now, I may be mistaken about the time that came up, but I am not mistaken about the reasons given.

Judge Krum: Q. You are not mistaken as to the fact that no such statement was made in Mahaney's presence? A. No sir, I am not mistaken as to that.

Col. Dyer: Q. You stated, as I understood, that it was suggested at that time, by Judge Krum, that there was no

necessity for Senator Burton, by reason of the case? A. He felt it was not advisable to have too many lawyers appear in the case.

Q. You were a witness before the grand jury? A. Yes.

Q. Was this question put to you at that time in
258 reference to that conversation, and did you give the following answer "Question: Wasn't it said in the conference between yourself and Judge Krum that probably Senator Burton had better not appear, that it might detract from his influence at Washington", and your answer "no sir".

Judge Krum: I submit, if the court please, that the inquiry is not competent, for the reason that the examination of Mr. Harlan was not had for the purpose of any legitimate inquiry before the grand jury because the indictment of Senator Burton had at that time already been found and returned.

The Court: Q. Why do you ask him?

Col. Dyer: I ask him that with a view of ascertaining whether this is a correct answer to the question as to why Senator Burton was used as counsel.

The Court: It may be used to refresh his recollection.

Col. Dyer: Q. I will get you to state now and ask you to repeat to the jury what the conversation was between Judge Krum, Senator Burton, yourself and Mahaney, in reference to Burton's appearing in the Dennis case? A. I answered that. My recollection is that that conversation did not occur at all at that time, but that it came up a day or two later, when Judge Krum and I had our next conference. I was always contending that Senator Burton should appear, but Judge Krum thought it was not advisable for him to appear and I accepted that. My recollection is that was afterwards.

Q. That did not occur at the meeting spoken of with Judge Krum and Senator Burton together? A. That is my recollection.

Judge Krum: That proposition was to show by this witness that no such statement as Mahaney related was ever made in his presence,—as far as that is concerned, never was made as he testified. For that reason I asked Mr. Harlan's attention immediately to the matter.

259 The Court: Notwithstanding that, counsel for the Government have the right to find out what was said at the time.

Judge Krum: I am not disputing that at all.

Col. Dyer: Q. You say that at the time you met Senator Burton, you went over more particularly the business of the

Brooks Brokerage and Commission company? A. That is, the question growing out of that which I then had in hand as representing Major Dennis, the legal phases of it and the different cases.

Q. And you said substantially that the business of that concern was out of the way? A. At that time, yes, as a business. Of course these legal questions and these little suits and this matter before the grand jury was just then very much involved, but the company itself had ceased to do business.

Q. You said that the literature which was to be made up and sent out by this company was to be done under your supervision? A. No sir, I didn't say that. I beg your pardon, my dear sir,—I said it was part of my duty as counsel to pass upon that literature, and it was the practice of the company to submit it to me; but it was only under my supervision.

Q. Did you ever submit any of that literature to Senator Burton? A. I am not clear on that. I am not prepared to say whether I did or did not. I do not remember that I did, and yet it might have been.

Q. Don't you remember sending some of this literature to him at Washington with a view to getting his opinion as to whether it was matter allowed to go through the mail? A. I have no independent recollection on that,—well, I have a strong impression, if you will permit me to make a distinction between that I actually recollect, and my impression,—that it was sent to him. I believe it was, but I do not recall it. My impression is that I requested Major Dennis to have it
260 sent to him.

Q. In looking over the literature and comparing it, I show you this and ask you whether this booklet that I now show you "Giant oaks from little [acrons] grow", whether that literature passed under your observation or not, as Attorney for this Rialto Grain and Securities company. A. Well, it would be impossible for me to say whether this particular one did; but similar ones did.

Q. One like it? A. I mean this particular print. They were making changes all the time; but I had examined literature of that character.

Q. Didn't you send literature of that character to Senator Burton at Washington with a view and for the purpose of getting him to examine it, and, if necessary, submit it to the postal authorities at Washington to see whether it would go through the mails or not? (hands book to witness) A. No sir, absolutely I do not remember anything about sending that literature in any shape, manner, way or form. I have no recollection of it at all.

Q. I show you another booklet and ask you whether or not you had the Government to examine one like that? (hands

booklet to witness). A. Well, literature of a similar character, yes sir.

Q. Do you recollect sending any paper like that to Senator Burton? A. No sir, I do not remember sending him any literature. I won't say I did not, because I have no recollection upon that subject at all.

Q. You talked with him about this securities business as an adjunct to a trust company, or something of that sort? A. No sir.

Q. What was that underwriting? A. I simply used the illustration before the jury that I wanted to show Senator Burton that we would solicit from the trust companies who had underwritten the bond issues the sale of these securities.

261 Q. Did that interview ever culminate in anything? A. No sir, it did not.

Q. Was there ever a single solitary thing of that sort, or any business of that sort submitted to Senator Burton at Washington? A. No sir, that matter, owing to a run of unfortunate circumstances, was never able to be brought about. But up until probably the 1st of March we were still trying to bring that thing out,—that is, one condition after another had transpired which delayed it,—there is no use in detailing them,—but there was still some hope that we would be able to bring that out up to as late as the 1st of March.

Q. When, according to your understanding, did the relations between the Rialto Grain and Securities company and Senator Burton cease? A. Well, I was informed, I think by Mr. Mahaney—it must have been within a few days after Senator Burton's services ceased that Mr. Mahaney informed me—

Q. That was on the 26th of March? A. I understand from the testimony that it was.

Q. Were you there in St. Louis on the 26-h of March, 1903, when this money was paid? A. I don't know whether I was or not.

Q. Did you see Senator Burton here at that time? A. No sir, I did not see him.

Q. If he was paid $500 in advance and that was the understanding, then Senator Burton's connection with this company would not terminate until the 26th of April, would it? A. That is true, yes, if that was the advance payment of March.

Judge Krum: The 15th of April? A. The 15th is when it would be due.

Q. You say "your pay begins on this date, the 18th of November", the day after you got back from Chicago? A.

262 Yes. Before that we made it the 15th.

Q. So when he got his payment on the 26th of March it was a payment that should have been made to him on the 15th of March, is that true? A. I presume that it is.

Q. Then his connection with the company would have continued until the 15th of April, he being paid in advance? A. I assume that is true, yes sir.

Q. If he got $2500 from the company between the 18th of November and the 26th of March, it was not at the rate of $500 a month, was it? A. Well, you can figure that just as well as I can.

Q. His term would expire on the 15th of the month? A. Yes; on the 15th. Of course we could have held it to the 18th, but we made it the 15th.

Q. Was there anything said to you about dispensing with his services after congress had adjourned? A. Said to me by anyone?

Q. By anyone about the office, Mahaney or anyone else? A. I do not fix the date as far as congress is concerned, but it became apparent, as I said, along about the first of March that these securities might never be brought about, and I had given up all hope of it as far as I was concerned, and the question of retaining the Senator—Senator Burton, was discussed, and Mr. Mahaney and Mr. McRae particularly contended that we should not retain him any further. We had about concluded to close the contract when I was informed one day shortly afterward that Senator Burton had resigned.

Q. You said something about the time. Don't you know that these complaints made by Mrs. Hout and Mrs. Evans, were in the hands of the Post Office inspector here when you went to Chicago? A. I must have known it, yes sir.

Q. Didn't you know as a matter of fact, that Mr. Price, the post office inspector, was at the Rialto Grain and Securi-
263 ties company on the 11th day of November? A. Well, I know that now.

Q. Didn't you know it at the time you went there, that Mr. Price had been there as well on the 14th of November, three days before you started to Chicago with Senator Burton? A. I think the date was the 14th. I know that now, and of course I must have known it then. I do not want to say I did not know it. I will say I did know it, but I do not remember that matter being mentioned to Senator Burton.

Q. Not at all. But what I want to find out is as to whether, when you made this employment of Senator Burton, whether or not you knew that complaints were pending in the department against the Rialto Grain and Securities company? A. I evidently did, but I have no recollection of it.

Q. Now, in your letter notifying Senator Burton of that indictment of Major Dennis, when you wrote to him on the 29th of November, you say you are "greatly surprised at that indictment". Now, if you were actually surprised at the indictment of Dennis at that time, what did you say to him between here and Chicago as to whether or not in your opinion he would or would not be indicted? A. Well now, the expression of surprise in that matter, Colonel, had nothing to do with that matter. First, let me call your attention to something. You misunderstand that. If you remember, on the day before I went to Washington, I called on you; don't you remember that?

Q. Certainly. A. —and I told you I was going to Washington to consult with Senator Burton, that he was counsel in this case, and I felt it was only courtesy to go on and lay the matter before him and see if anything further could be done. Don't you remember that?

Q. Yes, and I told you that if an indictment was returned I would not have a capias issued until you got back, on
264 Saturday. But you didn't turn up on Saturday, so the capias was issued. A. Yes, exactly, and that is what surprised me, that the capias was issued.

Q. You had reference to your surprise in the capias being issued before you got back? A. Yes, that is what I referred to.

Q. In another letter you wrote, didn't you, telling Senator Burton that you did not believe Dennis would be indicted? A. Refer to the letter, will you, please?

Q. I will withdraw that question, and ask you this: In the first letter, after you had had that talk with Burton between here and Chicago, among other things you say "I don't know what reports have been sent in to the Post Office department at Washington, nor am I prepared to say that the Government intends to make a case against Major Dennis; but if you can find it convenient to inquire of these facts at the department, you may be able to perform for us a great service at this time." Now, was that letter asking for this service written by you because of what had occurred between Senator Burton and yourself, between here and Chicago? A. No sir, it had no reference to that.

Q. You felt, however, by reason of his employment that you had a right to call upon him for such a service?

Judge Krum: Certainly, as he was employed.

A. I did. I treated him as an associate from that time on.

Q. And you wanted him to go to the Post Office department at Washington and see about these facts, and you understood that his employment covered such service, didn't you? A. Now, Colonel, isn't that more a matter of construction from the letter, than a matter of fact.

Q. I ask you for a matter of fact? A. I told you if a situation of that kind arose I would undoubtedly ask Senator Burton, and then it was for him to say.

265 Q. Why would you ask him? A. The reason why was that he was associate counsel, located at Washington, and it was but a natural thing for me to do.

Q. Will you state to the jury what business the Rialto Grain and Securities company had at Washington?

Judge Krum: The inquiry was with reference to the Rialto Grain and Securities Company.

Col. Dyer: Q. I ask him what business the Rialto Grain and Securities Company had at Washington? A. They had no business at Washington, but if this securities business had gone through, they would have had a whopping big business there.

Q. But I want you to tell to this jury what business this Rialto Grain and Securities company had at Washington, for which the services of an associate counsel were needed at Washington? A. They did not have any business at Washington, never expected to have any, outside this other feature which, at that time, looked promising.

Q. With a view of calling your attention to it, I will ask you to state whether or not you did not answer, in response to this question put to you before the Grand Jury: Question: You understood by the payment of $500 a month, he was the representative of the Rialto Grain & Securities Company at Washington? You understood that?" Answer: Certainly, he was".

Was that question asked and that answer given? A. Well, if you have it there, it might have been answered in that way.

Q. Well, I will ask you whether or not that question was not asked you, and if you did not make that answer? A. I will accept the record of that, Colonel.

Q. This question was also asked "He was paid for it"? Answer: "He was representing the Company as paid counsel; no question about that". Was that your answer?

266 A. It undoubtedly was.

Judge Krum: There is no doubt about that.

Col. Dyer: (resuming) Q. "That is what the money was paid to him for"? Answer: Certainly; acting there as counsel" Was not that your answer? A. Well, I don't know how the word "there" got in there. But it is possible.

Q. Now you said something about Senator Burton saying "I don't want to be cut off with one payment of $500; I don't want to get cut off with a month". Then you said that if he

came out here in the Dennis case, and Dennis should be indicted; and when Dennis was acquitted, or that out of the way, he did not want to be cut off with $500? A. At the end of that month's pay.

Q. That had reference alone to that Dennis case, when he said he did not want to be cut off? A. Not until he referred to it in that way, don't you see.

Q. Exactly. Well, why, if you were going ahead with this bonding business, and this underwriting business, writing all these letters and extending the business of this concern in that direction, why should Senator Burton think he was going to be cut off with $500, if that business was going on? A. You are as capable of answering that question as I. I am trying to give you exact conversations.

Q. And you are giving your understanding of them, too? A. No, sir, unless I tell you so. When I give you my understanding, I tell you so; but when I give you conversations, I try to give the conversations.

Q. But I want to know if you mean to be understood as saying, that the reason why Senator Burton did not want to be cut off with $500 when the Dennis case was out of the way, that the amount of $2500 was agreed to be paid him over a certain period of time?

Judge Krum: He simply stated what Senator Burton said.

A. Maybe he did not have faith in what I told him. You have got to construe those things; I cannot.

267 Col. Dyer: Q. You never had any correspondence with anyone else, except Senator Burton, at Washington, in reference to the complaints and troubles of the Rialto Grain & Securities Company, did you? A. I don't think I did. I do not recall any. It does not occur to me now. I don't think I did.

Q. Well, all matters that you had at Washington for the Rialto Grain & Securities Company, in the department, was managed by Senator Burton, was it not? A. Were there any matters there?

Q. I ask you if you had any matters? A. There were never any, to my knowledge, that required any attention, to my knowledge.

Q. You [wrtoe] him on December 3rd to the effect that "On Monday of this week a man dropped into the office of the Rialto Company, by the name of Bowman, and he had an account with the Company, having invested about $1500, a part of which he had lost, etc." Now you made the request of him in that letter, did you not, to ascertain whether such persons were in the Department—whether such men were official inspectors? A.

Whether there was such a person employed, I believe is the language of the letter, yes, sir.

Q. Why didn't you write direct to the Post Office Department instead of to Senator Burton? A. Well, I might have done so. I wanted to catch that fellow; that is what I was trying to do.

Q. You thought you could catch him better through Senator Burton than through the Post-office Department? A. No, sir, I proposed to catch the man and then lay the matter before the Post Office Department. That is what I was working on.

Q. If you were trying to ascertain if these persons were actually Post Office inspectors, why did you feel at liberty to call upon Senator Burton for that information, instead of the Post Office Department at Washington, for the information? A. I felt at liberty to call upon him, as I have explained, because he was associate counsel and as such interested in the apprehension of those people, as much bound to catch them as I was. I wanted his assistance.

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Q. Now you have said something in this connection about the Securities Company: I will get you to state whether there was or not any change in the business, names of the officers, the persons who were managing the Rialto Grain & Securities Company, under this new organization, from what had obtained in the Brooks Brokerage & Commission Company? A. Oh, yes.

Q. Dennis was President of the Brooks Brokerage & Commission Company? A. Yes, sir.

Q. Were you a Director and counsel also, for that company? A. I had a share of stock.

Q. Weren't you a Director? A. Yes, sir, I believe so; they made me such while I was away.

Q. Unsolicited? A. That is true.

Q. I understand. Was not this Company, this Rialto Grain & Securities Company, organized because of the difficulty that Dennis had gotten in with the Brooks Brokerage & Commission Company? A. Well, it was apparent that the organization of that company, that it could not exist under its plan of business. Now, as to the identity of the officers, I think Maj. Dennis was the only one who held the same position with both companies.

Q. They occupied the same offices in the Rialto Building that the Brooks Company had, didn't they? A. Yes, sir.

Q. And how long had the Brooks Company been in those same rooms? How long had it been in existence? A. I don't know; possibly a year or so; I am not able to tell you accurately.

Q. You understood that they got the names of the persons with whom the company dealt—that is, with whom the
269 Brooks Company had been dealing; and they took charge of the books of that concern, did they not? A. Well, they remained there in that office, and of course the Brooks Company was just allowed to die. Its affairs were wound up gradually, and it went out of existence.

Q. But its books were left there in the Rialto Grain & Securities Company? A. Yes, sir, that is true; until they were turned over to the Post Office Department.

Q. And there never was any change in the offices of the Company from the time the Rialto Grain & Securities Company was organized, until they quit?

Judge Krum: What change?

Col. Dyer: Q. I mean change of rooms? A. I think in October they moved down in the Railway Exchange Building.

Q. This last October? A. Yes, sir.

Q. But as long as they were in active business, they occupied the same rooms that had been occupied by the Brooks Company? A. That is true, yes, sir.

Q. I will get you to state to the jury what services beyond the consultations you say were had in reference to the Dennis indictment, did Senator Burton render the Rialto Grain & Securities Company? What other services, for which he was paid $2500? A. Well, they used his name on the advertising matter. I saw it on that booklet there—by the way, I forgot to mention that. I knew that would be required, the use of his name. I knew Maj Dennis would place a value on that.

The Court: Q. You were asked what legal services were rendered. Answer the questions.

Col. Dyer: Q. What did Dennis say that day, that Burton's name would be published on the paper, and why was Burton's name published on the paper? A. Major Dennis is a very good advertiser. He will take any fair advantage for advertising purposes. I knew he would put a value
270 upon the use of Senator Burton's name on this advertising matter. So that, among other things, I called Senator Burton's attention to, was the right to use his name. That was in this general conversation.

Q. And what you explained to him, I take it, Mr. Harlan, was that Dennis, for the Rialto Grain & Securities Company, would want to use his name on the printed matter sent out, as being counsel for the Company, believing that by such use the business of the Rialto Company would be increased: Is that so? A. Yes, sir. I don't know that I explained it quite so

fully as that; but I do remember calling Senator Burton's attention to that, and getting his consent to it; and that was one of the moving considerations for his employment.

Q. I will get you to state, whether to your knowledge any of that matter, bearing the name of Senator Burton as counsel, was sent to the Post office Department at Washington—to your knowledge? A. Not to my knowledge.

Q. Then so far as this payment of money was concerned, or this agreement to pay money, the $500 a month, as part consideration Senator Burton was to allow the use of his name? A. There is no question about that.

Q. Now if you can think of any more, please state to the jury what other services were rendered by the Senator? A. Well, you see that McGowan matter. There was something referred to him in connection with that; that was a very large claim, this fellow made, a very large claim.

Judge Krum: That had nothing to do with the Post Office Department.

Col. Dyer: Q. Let me understand about that McGowan claim: You say he rendered services in that particular: Will you tell what services he rendered in that McGowan matter, that you know of? A. The service he rendered was limited.

Q. To what? A. To such labor he performed making it, necessary in answering the telegram I sent him inquiring about this man McGowan. 271

Q. You mean to say it was limited; he was to ask about McGowan—

Judge Krum: This has all been excluded.

Col. Dyer: I am asking about services.

Judge Krum: The Court intimated yesterday, it is not material.

The Court: It was not material, as then involved. But it is now given by him as one of the services rendered. What I understand is finally to be submitted to the jury, is whether the services were rendered in the Departments or not. It is proper to find out what services he rendered, as bearing on the question to be finally submitted to the jury. If he rendered services in any other Department, for which he was paid, it seems to me it is proper to be brought out.

Col. Dyer: Q. What had he to do with this McGowan matter? A. Under the terms of my understanding, I could call upon him to come here to St. Louis and take charge of the matter. But it did not go that far. It was limited, in that particular instance, to me forwarding to him a telegram of inquiry, and his making the inquiry, and replying to my tele-

gram, as far as I know. But that was one thing understood with Senator Burton, that he would come to St. Louis whenever called, provided it was not inconsistent with his duty to Congress.

Q. I have not your message, and you did not keep a copy? A. No sir; it was in pencil.

Q. And you know that the messages are destroyed, after a certain length of time, by the Telegraphic authorities? A. I believe that is the rule.

Q. Do you recollect the substance of your message to him, sent at that time? A. I do not like to undertake to state that very accurately, but it was an inquiry concerning a man by the name of McGowan, who was here, making some
272 claim, which was undoubtedly outrageous; and seeking to use his position as Indian Agent, because he was working for the Federal Government, and mentioning this,—which was very disgusting. And I wired to Senator Burton to find out who he was, or if he actually was what he represented himself to be.

Q. Did you know, of your own knowledge of the sending to Senator Burton to cease that investigation of McGowan at Washington, by Mahaney? A. No, sir, I did not, until after it was done.

Q. But you do recollect receiving this message in reply to yours, from Senator Burton, at Washington, in reference to this matter of McGowan? A. Let me see the telegram.

Judge Krum: That is a matter that was excluded by the Court.

Col. Dyer: The telegram is in evidence; it was offered and read; but the testimony of the Commissioner of Indian Affairs was not allowed.

Col. Dyer: Q. You informed Senator Burton by this wire, that this man was making a claim against the Rialto Grain & Securities Company, and that the sum he claimed was a large sum: Did you state how much? A. I don't know whether I did or not.

Q. Didn't you ask him to see who McGowan was? A. I asked him to find out who McGowan was.

Q. He claimed to be an Agent of the Commissioner of Indian Affairs, did he not? A. He claimed to be an Indian Agent.

Q. Why, if you wanted to find out about McGowan, who belonged to the Commissioner of Indian Affairs office, why did you ask Senator Burton to find out about that?

Judge Krum: That is immaterial. I understood the ruling of the Court to exclude that, on the ground it was offered

by the Government to support the indictment, and it did not do so. Now affirmative inquiry has been permitted by
273 the Court on the cross examination of this witness, as to what Senator Burton did. He was paid so much money. What did he do? And it was on that line the Court has permitted this inquiry in respect to this matter. (here follows further argument.)

The Court: The objection is sustained. I cut the question out on yesterday, because it did not involve so far as testimony went, any action or services rendered by the defendant in the Post Office Department. I did it for the purpose of eliminating all foreign matters.

At this point recess was taken until two o'clock p. m.

Friday, March 25, 1904.

After recess, court convened at two o'clock, and the following proceedings were had:

Col. Dyer: Q. Mr. Harlan, at the adjournment, I was asking you about the services rendered by Senator Burton: I will ask you now to state what other services, if any, were rendered by Senator Burton to the Rialto Grain & Securities Company, or to Major Dennis, that you can now recall? A. In addition? Well, I called him in the Bowman matter.

Q. That is the one you have reference to, in the Inspectors? A. The man who was not an Inspector, but who represented himself to be an inspector.

Q. Yes. A. Now I do not recall any that was submitted to Senator Burton, in which he took part. The Company had the right to call him in.

The Court: You have answered the question. Confine yourself to the questions as put.

Col. Dyer: Q. You also stated, in answer to Judge Krum, that as far as you know of your own personal knowledge, that the business of the Rialto Grain & Securities Company
274 was carried on, on a different plan from that which had obtained in the Brooks Company, and, so far as you were advised, the business of the new Company had been conducted properly? A. Yes, sir.

Q. I will get you to state whether or not you know, as a mattter of fact, that indictments were pending in this Court against Mahaney, McRay and Dennis, growing out of the management of the Rialto Company?

Mr. Lehman: We object to that, if your Honor please. That matter was gone into on the direct examination just as it was on the State's case, on the theory approved by the

court—and I think correct beyond question—that it was relevant and proper to show what was stated to the defendant in that connection; and the examination has been limited to that. And the fact itself the Court has held to be immaterial, and manifestly must be so, or would have led to very different evidence. Everything introduced thus far has been in respect to statements made to the defendant at the time he was engaged as counsel.

Col. Dyer: It is offered only for the purpose of showing, not that in point of fact the Rialto Company violated the law, but in response to the question put to this witness, that the Company was open always to investigation. (Here follows further argument).

The Court: I understand the situation without any further argument. The objection is sustained, because I do not intend to go into what that Company was, one way or the other. It is not involved in this inquiry. That involves necessarily, whether an indictment was found, and the first thing we know we would be inquiring into the matter of whether that Company was conducting its business lawfully. That is not competent in any phase of this case.

Col. Dyer: Q. You have spoken of your visit to Senator Burton in the latter part of November, 1902, will you
275 state to the jury what your purpose was in seeing Senator Burton? A. Yes, sir. I went to see Senator Burton to go over with him the matter then in hand, namely, the question of whether anything further could be done, ought to be done, that might set the Government right, if you please, or to prevent the indictment of Major Dennis. I was moved to that—

Q. It does not make any difference how you were moved to it. Did you go to Washington to see him in reference to trying to prevent an indictment? A. Not to try to prevent the indictment.

Q. To do what? A. To consult with him, as one of the counsel in the case, for the satisfaction of my client.

Q. In your letter of December 2, 1902, you say, among other things "On Saturday night (this is a letter to Burton) I wired you that indictment had been returned, bond given, etc. I was somewhat surprised on my return here on Saturday night to be met at the train by one of the clerks of the Rialto company, who informed me that Major Dennis and Mr. Garland had been indicted and that day arrested". Now, after hearing that read, will you say that you were surprised that he was arrested, before your return, in consequence of the talk you had had with me; or, were you in fact surprised that an indictment had been found at all? A. No, sir. Colonel, if you remember, I wired you from Cincinnati that I was coming?

Q. That you were on the way, and had missed connection. A. Yes, sir. And I expected—without any reason, of course—that that matter would be held until I got back, and that was the reason for my surprise. I was not surprised at the indictment.

Q. You had no intimation that any indictment would be found against Dennis, had you? A. No, sir, except my own knowledge of the conditions. I was thoroughly familiar with the case.

276 Q. Now in that connection; in this letter to Senator Burton you said this, "Thus you will see, that all efforts to prevent this matter were defeated, almost before we got started": What did you mean by that expression? A. To the best of my recollection we were bending our efforts at that time, by the production of evidence, which I dug up, in conjunction with the Post Office Inspectors, to show that if there was any guilt, it lay with Brooks and Walden; and hoping that by the production of that evidence the Government would see that position and select Dennis as the prosecuting witness in this case.

Q. In point of fact, was it not your purpose in going to Washington to see the defendant, to present to him these facts that you had dug up, with a view of having them laid before the Post Office Department, and from that Department secure directions to the Local Post Office Inspectors to discontinue the investigation against Major Dennis? A. No, sir, Colonel, my dear sir, I never did anything like that.

Q. Well, I am only asking you about this phrase "Thus you will see all efforts to prevent this matter were defeated, almost before we got started": What did you mean by getting started?

Judge Krum: He has explained that.

A. I do not recall the conditions sufficiently clearly now to be able to answer any more definitely. I wish I could.

Q. Did you take the evidence that you had dug up, with you to Washington? A. Oh, no. That was a mass of stuff. I do not remember taking anything. Very much of it at that time had been turned over to the Post Office Department.

Q. Now in this letter you also say, after speaking of the class of claims made here, "In all such cases we have determined to stand strictly on our rights, and the result will be numerous complaints pouring into Washington from different parts of the country". In this letter, to whom did you expect these complaints that were to pour into Washington would go? A.

277 I only know from the rules of the Department that in the natural course of affairs they would be sent here for investigation.

Q. Now when you wrote Senator Burton this letter, and apprised him of the condition of affairs here, and notified him that complaints would probably pour into Washington, you knew at the time you wrote that letter, that the complaints would go to the Post Office Department, if they went anywhere, didn't you? A. Yes, sir.

Q. Now after stating that fact, of these complaints pouring into Washington, and knowing the Department to which they would go, you said this in this letter to him: "At your end of the line, you will of course use your own judgment in handling the situation"; What situation had you reference to? A. Undoubtedly the situation referred to in the letter. It is the only situation that that letter referred to.

Q. That is to say, Mr. Harlan, when you wrote this letter to Senator Burton, you apprehended that various complaints would go into the Post Office Department at Washington, against the Rialto Grain & Securities Company, did you not? A. I did.

Q. And when you state "At your end of the line handle these complaints in your best judgment", that is what you meant he should do? A. No, sir, that is not what it said?

Q. "At your end of the line, of course you will use your own judgment in handling the situation". Those are your words? A. Yes, sir.

Q. What did you mean by that?

Judge Krum: I submit he has already answered that.

The Court: He has already answered, he said he expected complaints would go to the Department.

Col. Dyer: Q. Now in this same letter you say "Locally I believe we will be able to control the situation, as this business has been pretty thoroughly gone over by the Inspectors, and they understand just what we are doing and how we are
278 doing it": In making that statement to him as to how you were expecting to take care of it locally what did you mean by that, other than you would attend to it locally? did you expect him to take care of another part, at the other end of the line, if you could take care of it locally, here; did you expect him to take care of it at the other end, at Washington?

Mr. Lehmann: I submit no interpretation can be put upon the language of the letter, other than is shown by the language itself.

The Court: In the light of the examination of this witness in chief, this is competent.

A. It was left to his judgment, as to whether he would or not. And I meant to leave it to his judgment as to whether he would or not.

Q. Your purpose was to state the actual conditions that existed, for his information, and leave it for him to determine what was the best course for him to pursue at Washington? A. Not the best course, necessarily; but what course he might consistently pursue.

Q. What course he might take it upon himself to pursue? A. Yes, sir.

Q. Now in your letter of December 3, to him, in speaking of these persons representing themselves as Post Office Inspectors, you say "But if they are Post Office Inspectors then it would appear that some order had been issued, evidently from headquarters, to try to catch the Rialto Company in a trap": What did you mean by headquarters"? A. That has reference to the Postal Department, undoubtedly.

Q. At Washington? A. At Washington, yes, sir.

Q. Then in that letter you ask "Would like to know if we are being investigated in this matter" you state the situation to him, with a view of getting from Senator Burton information as to whether this Company was in point of fact being investigated? A. That is the purport of that letter, yes, sir.

279 Q. Now in answer to that letter, you received a letter from Burton, in reference to what he had ascertained in reference to that matter, that there were no such Post Office Inspectors? A. Yes, sir.

Q. Did you include that in your estimate of any service that was rendered by the defendant to the Company? A. Why, I never thought anything of it, one way or the other, Colonel, in that connection.

Redirect Examination

By Judge Krum:

Q. Mr. Harlan,did you ever proceed, at any time, as between Senator Burton and the Rialto Grain & Securities Company, that he was obliged or could be required, after his contract, to appear for the Company in any matter before the Post Office Department, or any other Department? A. No, sir.

Q. Now with reference to these two letters that you say you returned to Senator Burton, and which he told you afterwards he himself had destroyed: Did those two letters in any way whatever, have any bearing upon or any connection with, any of the matters of the Rialto Grain & Securities Company, or anything involved here? A. To the very best of my recollection, they did not.

Q. Is there any doubt about that at all? A. No, sir, there is no doubt about it at all.

Q. Now, Mr. Harlan, is it or is it not a fact, that by reason of the relations existing between Senator Burton and yourself, you went to him or sent to him, for purposes of information, just as you would send to any other Senator or any Member of

Congress, who had access to the Department, with whom you were connected, or with whom you were acquainted? What I want to get at is, whether you went to the Senator or sent to him on any occasion, on the hypothesis that here was something he was required to do, and, accordingly you communicated the matter to him to do or perform? A. It was more
280 on account of my acquaintance with him.

Recross-Examination

By Col. Dyer:

Q. You say you made these requests more on account of your acquaintance with the Senator than anything else? Were you acquainted with Senator Cockrell? A. No, sir.

Q. Were you acquainted with any Member of Congress from St. Louis? A. Not very well.

Q. Your acquaintance with our own Senator and our representative in Congress was not of such a character as you thought you had the right to call upon them for this information? A. No, sir; I have a mere speaking acquaintance with Mr. Joy, and he is the only man I do know.

M. G. Price, a witness of lawful age, being duly produced, sworn and examined in behalf of the defendant, testified as follows:

Direct Examination

By Judge Chester M. Krum:

Q. What is your name? A. M. G. Price.

Q. What official position have you under the United States? A. Post Office Inspector.

Q. In? A. The St. Louis division.

Q. In the Fall of 1902 were you here in St. Louis? A. Yes, sir.

Q. I show you two letters which have been introduced here, one from Bella Evans, and the other from Mrs. K. C. Hout, together with the garment which contains them—called a jacket—and get you to state to the jury whether you had any connection with any investigation of those two matters here in St. Louis? A. I did.

Q. When were they turned over to you, if you recall? A. On November 14th.

Q. What did you do with reference to them? A. I made the inquiry and investigated the records of the Rialto
281 Grain & Securities Company, that same day.

Q. Then what did you do? A. I returned the case to the office.

Q. With any report of it? A. No, sir.

Q. Was anything further shown with reference to these two matters? A. These two complaints? No, sir.

Q. Why was that? A. Well, investigation of the records satisfied me that the complaints were not warranted.

Q. And, therefore, nothing further was done? A. On these complaints, no sir, at that time.

Cross-Examination

By Col. Dyer:

Q. When such a paper as that is referred to you, when the matter is closed up generally, do you make a written report? A. Yes, sir, when the case is closed we recite the history and conclusion of the case, and recommend that it be closed.

Q. Was there any such thing done in this case by you? A. No, sir.

Q. Subsequently, did you make further investigation under this same number of this same jacket, of this concern? A. Yes, sir.

Q. I do not ask you what your conclusions were in reference to that, but was the matter embraced in this Number of the case sent to you, subsequently considered by you and other Inspectors, or any more Inspectors? That is, did you investigate this Company further with reference to complaints that were jacketed with this? A. Yes, sir.

Q. And upon that case was there ever any report in writing made by you to your Chief Inspector here, the Chief Inspector in charge, Col. Dice, in case No. 13778 O? A. There was, in the latter part of August, 1903.

Q. Now those reports that are made by local inspectors, or reports are made to the Inspector in charge here, are they not? A. Yes, sir.

282 Q. You do not communicate with the Department at Washington, except through the Post Office Inspector in charge here? A. No, sir.

Q. Your report, in all instances, is submitted to him? A. Yes, sir.

Q. And he either approves or disapproves the report, and he is the one who has the official correspondence at Washington, with the Chief Inspector in charge? A. Yes, sir, that is correct.

Redirect Examination

By Judge Chester M. Krum:

Q. When, after this first matter, Mr. Price, do you recall, was there any examination here into the business or methods of the Rialto Grain & Securities Company? A. Well there was a thorough investigation made, which began on July 27th, I believe, and concluded in the latter part—it extended over two or three weeks, in which Inspector Piatt and myself were engaged.

Q. From the time in November, at the time you examined the complain-s of Mrs. Evans and Mrs. Hout, from that time down to July, when you conducted the thorough examination, was there any examination made? A. I possibly made inquiry on some complaints that came in during the interval. There were only a few for a time there that came in.

The Court: Q. What do you say about it? A. From November 14th, in reference to these two complaints, there was possibly four or five or a half dozen came in, making inquiry, on which I would probably go down there and make inquiry as to their standing, and what the condition was. But the general investigation, the final investigation was made from about July 27th to about the middle of August.

Q. Refer to this paper (indicating carbon copy of jacket) which is in evidence; you find here a complaint of Fravel, and of Allen, and of Warner—which are in evidence here.

283 Q. Do you recall any examination or investigation in regard to those complaints? A. To begin with, I don't know anything about this (indicating carbon or jacket).

Q. That is the Washington paper? A. Yes, sir. If those complaints were in that period, I probably made iquiry about them; but I do not recollect them from that designation. I don't know whether it was a complaint, or literature submitted and inquiry made as to what it was.

Q. It so happens that it was literature submitted, with inquiry about it: Suppose it were literature submittted, and that was referred here, what would be done in regard to that? A. It would be put in the files of the case.

Q. Would any investigation be made of it? A. Ask if they had any transactions with those people; that would be nothing uncommon.

Q. During the period of the business of the Rialto Company, Mr. Price, I will get you to state whether or not you had access down there to the books and papers of the Company at all times? A. Yes, sir, I principally called on Mr. Harlan and he submitted everything I called for.

Judge Krum: I offer in evidence indictment No. 4172 in this court, of the United States versus Hugh C. Dennis and Thomas W. Garland, filed November 24, 1902, and call attention to it sufficiently to indicate that it was an indictment under section 5480 of the Revised Statutes of the United States, with reference to an alleged scheme to defraud, which was to be effectuated by the use of the mails of the United States; there being two counts, both based upon the use of the mails, through the deposit of a letter by the Brooks Brokerage & Commission Company.

We also offer in evidence the verdict of the Jury, returned on the 20th day of Januafy, 1903, to show the date of the determination of the case; the verdict showing that by direction of the Court the defendants were adjudged not guilty.

284 Col. Dyer: There is no objection to that, if with it the official statement of the Court may also go to the jury, as to why it was done; otherwise, they would be left in the dark.

Judge Krum: We have no objection to that.

The Court: We will go no further than that: You have gone far enough when you offer the verdict.

Mr. Lehmann: We wished to show the date of the verdict.

The Court: The date would have been fixed when the verdict was offered, without stating what the verdict was.

285 United States of America,
Eastern Division of the Eastern
Judicial District of Missouri—ss.

In the District Court of the United States, in and for the Division and District aforesaid, at the November Term thereof, A. D. 1902.

The Grand Jurors of the United States, impaneled, sworn and charged, at the Term aforesaid of the Court aforesaid, on their oath present: that Hugh C. Dennis and Thomas W. Garland, on the 1st day of June, 1902, at said Division of said District, and within the jurisdiction of said court, did then and there unlawfully and feloniously devise a scheme and artifice to defraud Frank Wilgus, B. F. Woodlee (whose christian name is to the Grand Jurors aforesaid unknown) and divers other persons, whose names are to the Grand Jurors aforesaid unknown, and for that reason cannnot be given, of their money and property, upon their, the said Frank Wilgus and B. F. Woodlee, and said divers other persons, responding to the request, solicitation, proposal and representation of said Hugh C. Dennis and Thomas W. Garland as hereinafter set forth.

That said scheme and artifice to defraud, so devised as aforesaid, was to be effected by the said Hugh C. Dennis and Thomas W. Garland by then and thereafter opening correspondence and communication with said Frank Wilgus, B. F. Woodlee, and said divers other persons to the Grand Jurors aforesaid unknown, resident within and without the United States, by means of the post office establishment of the United States.

That said scheme and artifice to defraud, so as aforesaid devised, was as follows: that they, the said Hugh C. Dennis and Thomas W. Garland, under and in the name of the Brooks Brokerage & Commission Co., should hold themselves out to

and put themselves in communication with (by means of the post office establishment of the United States) the said
286 Frank Wilgus B. F. Woodlee and the said divers persons so as aforesaid to the Grand Jurors aforesaid unknown, and in the name of the Brooks Brokerage & Commission Co., as aforesaid, as brokers engaged in the business of buying and selling grain and provisions on commission, and thereby induce the said Frank Wilgus, B. F. Woodlee, and said divers other persons, to order the purchase or sale of grain and provisions, and deposit with the said Hugh C. Dennis and Thomas W. Garland, under the name of the Brooks Brokerage & Commission Co., large sums of money as margins on said orders of purchase and sale, so as aforesaid solicited, without any purpose or intention upon the part of them, the said Hugh C. Dennis and Thomas W. Garland, acting as aforesaid, under the name of the Brooks Brokerage & Commission Co., as aforesaid, to make purchase or sale of the grain and provisions as should be or might be ordered by the said Frank Wilgus and B. F. Woodlee and said divers other persons, but upon the contrary to embezzle and appropriate to their own use said money, which might be as aforesaid deposited in the hands of them, the said Hugh C. Dennnis and Thomas W. Garland, in and under the name of the said Brooks Brokerage & Commission Co., as aforesaid.

That in pursuance of, and in executing said scheme and artifice to defraud, so devised as aforesaid, and in and for executing the same and attempting so to do, the said Hugh C. Dennis and Thomas W. Garland on the 11th day of July, 1902, at the Division and District aforesaid, did wrongfully, unlawfully, and feloniously deposit and cause to be deposited in the United States post office at the City of St. Louis, in the State of Missouri, and in a branch post office thereof, and in a street and hotel letter box thereof, to be sent and delivered by the post office establishment of the United States, a certain letter and writing, which was then and there enclosed in an envelope, having thereon the address and superscription, to-wit: "Mr. Frank Wilgus, La Cygne, Kans.", and post-marked, St. Louis, Mo., July 11, 1902, 9-30 P. M., and which envelope then
287 and there contained a letter and writing of the tenor following, to-wit:

Brooks Brokerage & Commission Company.
Incorporated.
Successors to Chas. H. Brooks & Co.
Grain and Provisions.
Orders Executed on Margins.
218 to 224 Rialto Building.

St. Louis, Mo., July 11, 1902.

Mr. Frank Wilgus,
La Cygne, Kans.

Dear Sir: We are in receipt of your favor of the 10th, inst. enclosing remittance for $24.30, with instructions to invest same in corn for September delivery, and to handle your purchase as our judgment may dictate. In compliance therewith, we take pleasure in handing you confirm of purchase by you to-day of 950 bushels for September delivery at 62 cents per bushel, protected by a margin of 2 1/2 cents per bushel.

We believe you have made an excellent investment, and one which will shortly show you a handsome profit. In fact we do not believe a person can make a mistake by investing largely in corn for September delivery at the present time. You have probably noticed that the Gates people have pushed the price of July corn up to 90 cents. There will be less corn in the market in September, as already over 20,000,000 bushels of corn have been sold for delivery that month. As a consequence, it will be an exceedingly easy matter to push the price of September corn far above $1.00 a bushel. We believe that the present prices are as low as September corn will ever sell for, and that those who are fortunate enough to secure corn at the present market prices, will profit largely.

We will handle your trades as you suggest, and take care of your interests as though they were our own, and we believe that the manner in which your investment will be handled will please you. We will send you daily the financial
288 edition of the St. Louis Star, which gives an excellent market report, and we will keep you fully informed of all transactions we make for your account.

Thanking you for your order, we remain,

Very respectfully yours,
BROOKS BROKERAGE & COM. CO.,
By Hugh C. Dennis, Treasurer."

S. H.

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

Second Count. And the Grand Jurors aforesaid, on their oath aforesaid, do further present: that on the day and year aforesaid, at the Division and District aforesaid, and within the

jurisdiction of said court, the said Hugh C. Dennis and Thomas W. Garland, did then and there unlawfully and feloniously devise a scheme and artifice to defraud Frank Wilgus, B. F. Woodlee (whose christian name is to the Grand Jurors aforesaid unknown) and divers other persons whose names are to the Grand Jurors aforesaid unknown, and for that reason cannot be given, of their money and property, upon their, the said Frank Wilgus, B. F. Woodlee, and said divers other persons responding to the request, solicitation, proposal and representations of said Hugh C. Dennis and Thomas W. Garland, as hereinafter set forth.

That said scheme and artifice to defraud, so devised as aforesaid, was to be effected by the said Hugh C. Dennis and Thomas W. Garland, by then and thereafter opening correspondence and communication with said Frank Wilgus, B. F. Woodlee, and said divers other persons to the Grand Jurors aforesaid unknown, resident within and without the United States, by means of the post office establishment of the United States.

That said scheme and artifice to defraud, so devised
289 as aforesaid, was as follows: that they, the said Hugh C. Dennis and Thomas W. Garland, under the name of the Brooks Brokerage & Commission Co., should hold themselves out to and put themselves in communication with (by means of the post office establishment of the United States) the said Frank Wilgus, B. F. Woodlee, and the said divers other persons so as aforesaid to the Grand Jurors aforesaid unknown, and in the name of the Brooks Brokerage & Commission Co., as aforesaid, as brokers engaged in the business of buying and selling grain and provisions on commission, and thereby induce the said Frank Wilgus, B. F. Woodlee and said divers other persons, to order the purchase or sale of grain and provisions, and deposit with the said Hugh C. Dennis and Thomas W. Garland, under the name of the Brooks Brokerage & Commission Co., large sums of money as margins on said orders of purchase and sale, so as aforesaid, solicited, without any purpose or intention upon the part of them, the said Hugh C. Dennis and Thomas W. Garland, acting as aforesaid, under the name of the Brooks Brokerage & Commission Co., as aforesaid, to make purchase or sale of the grain and provisions as should or might be ordered by the said Frank Wilgus, B. F. Woodlee and said divers other persons, but upon the contrary to embezzle and appropriate to their own use said money, which might be, so as aforesaid, deposited in the hands of them, the said Hugh C. Dennis and Thomas W. Garland, in and under the name of the said Brooks Brokerage & Commission Co., as aforesaid.

That in pursuance of, and in executing said scheme and artifice to defraud, so devised as aforesaid, and in and for executing the same and attempting so to do, the said Hugh C. Dennis and

Thomas W. Garland, on the 7th day of July, 1902, at the Division and District aforesaid, did wrongfully, unlawfully
290 and feloniously deposit and cause to be deposited in the United States post office, at the City of St. Louis, in the State of Missouri, and in a branch post office thereof, and in a street and hotel letter box thereof, to be sent and delivered by the post office establishment of the United States, a certain letter and writing, which was then and there enclosed in an envelope, having thereon the address and superscription, to-wit: "Mr. B. F. Woodlee, P. M., Forest, Tenn.", and post-marked St. Louis, Mo., July 8, 1902, 1-30 A. M., and which envelope then and there contained a letter and writing of the tenor following, to-wit:

Brooks Brokerage & Commission Company.
Incorporated.
Successors to Chas. H. Brooks & Co.
Grain and Provisions.
Orders Executed on Margins.
218 to 224 Rialto Building.

St. Louis, Mo., July 7, 1902.

Mr. B. D. Woodlee, P. M.,
Forest, Tenn.

Dear Sir: We beg to acknowledge receipt of your favor of July 1st., inclosing remittance for $75. with instructions to invest same in corn for September delivery. In accordance therewith we beg to hand you confirm of purchase by you of 3750 bushels of September corn, bought at 62 1/4 cents and protected with a margin of 2 cents.

We believe that you have made this investment at the right time, for September corn has every appearance of going up several cents a bushel within the next ten days.

We shall be pleased to give your investment our personal attention, and trust that the manner in which we handle same will meet with your approval.

291 Thanking you for your order, we are

Very respectfully yours,
BROOKS BROKERAGE & COM. CO.,
By Hugh C. Dennis, Treasurer.

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

(Signed) DAVID P. DYER,
United States Attorney.

Indorsed: No. 4772. United States District Court, Eastern Division, Eastern District of Missouri. The United States vs. Hugh C. Dennis and Thomas W. Garland. Indictments for Violation of Sec. 5480. A True Bill. Robert McK. Jones, Foreman Grand Jury. Filed Nov. 24, 1902. Wm. Morgan, Clerk.

292 Which said verdict is in the words and figures following, to-wit:

United States of America
Eastern Division of the Eastern
Judicial District of Missouri—ss.

In the District Court of the United States in and for the Eastern Division of Said Judicial District.

November Term, A. D. 1902, Tuesday, 20th January, 1903.

The United States, Plaintiff,
No. 4772 vs.
Hugh C. Dennis and Thomas W. Garland, Defendants.

Indictment for Violation of Sec. 5480 of the Rev. Stats. of the United States.

We, the jury, in the above entitled cause, by direction of the Court find the defendants Hugh C. Dennis and Thomas W. Garland, not guilty, as charged in the indictment.

(Signed) P. RITCHIE.
Foreman.

293 W. W. Smith, a witness of lawful age, being duly produced, sworn and examined, in behalf of the defendant testified as follows:

Direct Examination

By Judge Chester M. Krum:

Q. What is your name? A. W. W. Smith.

Q. Where do you live Col. Smith? A. Topeka, Kansas.

Q. What is your occupation? A. I am private Secretary to Senator Burton.

Q. How long have you held that relation to the defendant? A. To the—I do not recall the time, but since he has been Senator, two or three years.

Q. I show you a letter from Senator Burton, of the 20th of November, 1902, one of December 9, 1902, one of January 19, 1903, and one of February 11, 1903: Who, if you know, signed the letter which is dated the 20th of November, 1902? A. (After examining letter) Senator Burton.

Q. Do you remember the circumstances of writing that letter? That is, whether he dictated it to a stenographer or gave

you directions in regard to writing the letter and sending it? A. I do not remember distinctly in regard to this letter.

Q. Now, in that connection, just indicate to the jury what the practice in the Senator's office has been, with reference to writing letters; what is the process ordinarily followed?

Col. Dyer: I object to what the practice was in his office about writing letters.

The Court: The court does not understand the purpose, now; perhaps it will be plainer later on.

Judge Krum: The defendant does not try to disclaim any responsibility for those letters at all; but it [—] proper to show the circumstances under which they were written, and how they came to be written.

A. I write a great many of the Senator's letters—the larger portion. That is, I dictate them.

294 Judge Krum: Q. This letter to which your attention was first called, was dictated by him, if you know? A. I would not be positive about that letter.

The Court: That is the one of November 20? A. Yes.

Judge Krum: Q. That is, you cannot say whether you dictated that letter, or whether the Senator himself did? A. No, sir. I write the greater portion of the letters. But, as a rule, those I write I sign. That is, I sign his name.

Q. With his authority, of course? A. Yes, sir. This one (indicating letter of November 20, 1902) is signed by the Senator himself; hence, I am inclined to think he dictated it.

Q. Now turn to the next one, the letter of December 9, 1902. A. I have it before me.

Q. Who wrote the signature on that letter? A. That is my signature.

Q. That is, your writing? A. Yes, sir.

Q. What have you to say as to the authorship of that letter; whether the Senator dictated it, or whether you dictated it? A. Well, there are expressions in this letter that I have used frequently, and I am very much in doubt as to who wrote it. I would not pretend to say that I dictated it, or the Senator did. I am practically unable to say.

Q. Does the fact that you yourself signed it, in his name, have any bearing with you as to the authorship of it and who probably dictated it? A. No, sir; he frequently dictates letters, and then the letters come to me from the stenographer, and I run over them and sign them.

Q. Now take the letters in this next lot here—one of the 19th of January and one of the 11th of February: Who signed those? A. The letter of January 19th, I signed this letter.

Q. Turn to the next one and see who signed that? A. February 11th. This is my signature.

Q. Now is there anything about either of those letters
295 from which you can tell who was the author of them, in the sense of having dictated them, either of them, to the stenographer, or written it himself? A. No, sir, I did not see anything in either of these letters. There is an expression in this letter overe here, that makes me in doubt about it.

Q. To which one do you refer? A. I am in doubt as to the one of December 9th.

Q. What is the expression that you refer to? A. "I will take care of things at this end of the line". I can explain why I am in doubt about that, if you wish it.

Q. Is there anything about that, that inclines you to the conclusion that that is an expression of yours, or an expression of the Senator's? A. I am inclined to think that is an expression of mine, although I am not positive about it.

Q. Why so? What is there about it, to indicate that? A. I have charge of all the business in relation to pensions which we have a great many of. The claimant at the Pension office writes the Senator, I take it and go to the Pension office, try to find out what is necessary—

The Court: I do not think that is proper.

A. It is that I used that expression in those letters.

The Court: Q. Do you know you did, or did not? Do you say you dictated this letter? A. I am not positive; I would not swear.

The Court: Q. It is in the nature of a conjecture? A. Yes, sir.

Judge Krum: Yes, of course it is; that is all it is offered for.

Q. Were you in the office in Washington when the Chief Post Office Inspector and the Inspector Vickery, came into the office? A. Yes, sir.

Q. And had a conference with the Senator? A. Yes, sir.

Q. I will get you to state to the jury what occurred on that occasion: That is, what was said on that occasion by
296 either Senator Burton or Mr. Cochran? A. Without going over all that was said, the statements that were made by those two gentlemen were practically correct, but it was not completed.

Q. What further than they have indicated, according to your recollection occurred? A. When the Senator got through Mr. Cochran said, "Well, Senator, I will make one statement: You did say you were not employed to go to the Department, by anybody, and that you could not be employed to go to the department by anybody for pay or against the government.

Q. Now, with that exception, your judgment is, that the statements made by Cochran and Vickery were substantially correct as to what occurred? A. That is my recollection, yes.

Q. Do you remember the date of that interview? A. I don't remember the date, but it was the Saturday evening that we received information that the Senator was indicted.

Cross-Examination

By Col. Dyer:

Q. You have stated about the course of business in the defendant's office; I will ask you to state if it is not true that Senator Burton would frequently dictate a letter and before the stenographer could transcribe the notes he himself would leave, with directions to you to sign his name? A. Oh, yes, yes.

Q. Wasn't that the usual course that was pursued in the office by him, of his letters in reference to important matters where he was otherwise engaged, that he would dictate the letters, leave the office, and from the stenographer you would receive the letter written, and sign his name to it? A. Very often that occurred.

Q. Now, is there anything in this letter of Dec. 9th, that would lead you to believe that you dictated the letter rather than that it was dictated by Senator Burton, and in that
297 connection, I call your attention to this part of the letter: "I would suggest that you prepare carefully the case of Dennis for trial next month, and I have learned to know that you must watch carefully that the jury is not set up on you" Did you dictate such a thing as that? A. Let me explain how that would come about.

Q. Did you dictate that? A. I cannot say. I had said I would not swear that I dictated that letter.

Q. Is there any expression in this letter other than the one "I will take care of things at this end of the line" that in anywise sounds like your dictation? A. That line is what calls my attention to the fact that I may have dictated it.

Q. Then were you sufficiently acquainted with the business that was being transacted at St. Louis to give directions to a lawyer here to look out and watch carefully that the Jury is not set up on him? A. I am very familiar with the Senator's business, all of it, and if I dictated this letter, it was upon a statement of the Senator in regard to the dictation or in regard to the writing of the letter.

Q. You would not, in a matter of this kind, undertake to send out any letter of importance without first consulting your chief in reference to it, would you? A. Oh yes, that occurs right along.

Q. That is, in routine business concerning pensions, and one thing and another, you write these letters after you make the examination? A. Yes, sir.

Q. During this time, between November, 1902 and March 1903, did you, at the direction of Senator Burton, make any visits to the Post office department in regard to the Rialto Company? A. Not any.

Q. At no time during this period were you ever sent by him to the department? A. Oh, yes. I recalled, on yesterday that the day Mr. Burton was in Mr. Cochran's office with
298 Mr. Dennis, I had an errand there, and I dropped in at at the time they were there in connection with this business.

Q. I asked you, did you ever go to the post office department in reference to this business, for Senator Burton. A. Never.

Q. Did he consult you at any time in reference to any complaints about the Rialto Grain and Securities Company? A. Not any, never.

Q. Did you at any time and at his instance, ever render any service in Washington to the Rialto Company? A. Not to my knowledge.

Judge Krum: This does not grow out of any examination of ours.

Col. Dyer: Q. Now, this letter of January 19th, that Judge Krum asked you about, as I understand you, you say you signed that letter? A. That is my signature.

Q. Did you dictate that letter? A. I cannot say.

Q. Is there any expression in that letter that you believed is yours and not an expression of Senator Burton's? A. There is nothing in that letter that particularly calls my attention to it as being mine. You see, Colonel, it is in this way—

Col. Dyer: I don't care for any explanation. This is the letter that Judge Krum hands him and asks him if he wrote. It is the one of Jan. 19th, and is the one that has not been read in evidence, because your Honor excluded it.

Judge Krum: If it does not go in evidence, it is wholly immaterial.

The Court: There is no claim, as I understand it, that the defendant disavows the authorship of these letters. These questions are asked to show how the business was conducted.

Mr. Lehmann: And how much stress might be laid on a mere turn of verbal expression. Here is a man writing hundreds of letters a day.
299 The Court: I do not think there is much importance attached to it.

Judge Krum: I offer in evidence the record of the case on trial, showing the appearance of the defendant, on Jan. 27, 1904. I offer the record of that date, of the waiving of the

reading of the indictment, entry of plea of not guilty and the order of the court for the appearance of the defendant March 7, 1904, and the further entry of the order of Feb. 9, 1904, to appear on March 22, instead of March 7th.

I offer the files of the case in so far as to show that no capias was ever issued for the apprehension of the defendant.

The Court: Q. What is the purpose of that?

Judge Krum: To show that he appeared here voluntarily that no capias was issued and no arrest made and that he voluntarily waived his privilege as a Senator.

The Court: The record shows these facts and if agreeable to counsel, these facts will be understood without reading through the record. It was so agreed.

Joseph Ralph Burton the defendant, being first duly sworn, testified as follows:

Direct Examination

By Judge Krum:

Q. What is your name? A. J. R. Burton.

Q. How old are you, Senator? A. I am 53 past.

Q. When were you qualified as a Senator of the United States? A. On the 4th of March, 1901.

Q. From what state? A. From the state of Kansas.

Q. Without undertaking to go into the details of the conversation between you and Mr. Harlan on the occasion that he has described, I will get you to indicate to the jury whether in the main and substantially his statement as to what occurred and agreed on and arranged for is correct? A. It is
300 substantially correct. That is, the arrangement that was made on the train between here and Chicago. There are one or two matters that I do not think he mentioned just as as I remember them.

Q. Then in that regard, as briefly as possible, indicate what occurred? A. The fore part of the conversation was, as he said, directed to the criminal prosecution that he expected would be brought against Dennis; and when the question of my employment beside the defense of that case, was the main subject of discussion, and it became apparent that he wanted me as counsel for the Rialto Grain and Securities Company as well as to help in that case or any cases affecting Major Dennis, and I think this is the language that was used. I said "Now, Mr. Harlan, let me understand you. I am a senator. This company is using the mails extensively. Is it contemplated in any way that I am expected to use any influence in the department directly or indirectly". His answer was quite emphatic he said "No, senator, we do not want any influence in the deparement. This company has been organized

under the direction of myself and Judge Krum, it is violating no law, it does not intend to violate any law, and we do not want any influence in the department at all". That is as nearly as I can recall the language.

Q. Was there any other item of conference or agreement which Mr. Harlan has not given as fully as you remember, or as you remember it? A. I do not think Mr. Harlan or Mr. Kastor either has made it clear that both of those gentlemen at length—and especially Mr. Harlan explained to me their estimation of Major Dennis.

Q. We do not care so much about that, Senator, as the details of the agreement, whatever they were, and whatever limitations were put upon them? A. There were no
301 limitations, except as he has explained, the salary was to be $500 a month, as he has given it. I want to say here, that it is very hard for me or anyone to explain the optimism of Mr. Harlan with regard to the securities feature of the Company as he explained it that day. It will be born in mind that bonds, stocks and everything was on the increase at that time.

[—] Is it a fact that feature of the business, or proposed business of the Securities company was large- [dwely] upon by Mr. Harlan in his conversation with you? A. It was, yes sir. He also told me that the company had leased an elevator in St. Louis, contemplated leasing other elevators, and expected to carry in the grain business a large quantity of corn, somewhat similar to what a bank does in carrying a currency reserve.

Q. How soon after that interview did you reach Washington? A. I reached Washington on the 19th day of November.

Q. When, before that, had you last been in Washington? A. I left Washington on the 5th day of July, of that same year, and spoke in Topeka, Kansas, on the 7th, sailed for the Sandwich Islands on the 14th of August, returning and landing in San Francisco on the 6th of October, went into the campaign, and from the time I left Washington on the 5th of July, I was not back there any more until the 19th day of November.

Q. Now, you have heard the statement of Mr. Cochran, with reference to the earliest of your calls at his office. What was your recollection in regard to that? A. I called there first on the 20th day of November.

Q. Had you been there previously to that at any time between the time when you left Washington at the close of the session and the occasion of this visit that you indicate? A. I had not. I had not even been in the city.

302 Q. State what occurred—or, in the first place, for what purpose or for what purposes did you go to the Post Office department on the 20th of November? A. I had received a letter from Mr. Harlan—

Q. Pardon me, is this the letter, the one of the 18th of November? A. Yes, sir. That is, no sir, this is not the original.

Q. The letter of which that is a copy? A. I take it
303 that is a copy, without reading it all over.

Q. Here is the original? A. (referring to paper) Yes, that is the letter.

Q. Now, you had received that letter? A. Yes sir.

Q. On receipt of it, what did you do? A. I went to Mr. Cochran's office.

Q. What inquiry did you make, as you recall? A. I asked him if he had any information—I cannot remember the exact words, but whether he knew if Mr. Dennis had been indicted, or if it had been determined to indict him, and said to him "if he is indicted I expect to help defend him." And I think his answer was that he knew nothing about it.

Q. Now, in what connection was any information afforded you in regard to this so-called complaint of Mrs. Evans or Mrs. Hout? A. I cannot remember the exact words, or how we got at the subject, but to the best of my recollection I explained to Mr. Cochran that Mr. Dennis owned the Rialto Grain & Securities Company, and I asked him if there were any complaints,—if he knew anything about that company was my first question, and he said he did not know anything about the company; and I asked him if there were any complaints against the company.

Q. Right there, Senator, what was your purpose in making that inquiry of Cochran with reference to any complaints concerning the Rialto Grain and Securities company; state to the jury what your purpose in that respect was? A. I had been employed as counsel for the company. That I had this letter from Mr. Harlan (referring to letter of Nov. 18), telling me that the tentative employment he had made with me had been ratified by the company. I had been advised that Maj.
Dennis had had trouble with the Brook Brokerage com-
304 pany. As I say, I went there to ask about that. Both Mr. Kastor and Mr. Harlan had assured me that whatever irregularities there were in that company, it was not the fa-lt of Maj. Dennis. I knew Judge Krum and Mr. Harlan were the attorneys of this company, but being advised that far, I wanted to satisfy myself with respect to the standing of this company in the department. That was the motive of the inquiry.

Q. In response to your inquiry about complaints, what did you receive from Mr. Cochran? A. Mr. Cochran was sitting, as I remember it, next to the window; his room is rather a long, narrow one; he got up and went across to the fore part of the room, if I recollect rightly, and looked at a record, and came back and said to me that there had been two complaints

made or filed "last month", as I understood him, and that they had been sent out to the inspector in charge in St. Louis. And he gave me the names Bells Evans and Mrs. Hout, of Albany, New York and I made that little entry there at the time.

Q. At the time of the interview betweeen Mr. Harland and yourself, in which the details of your employment were arranged, was there any indication given to you that there had been any complaint made against the Rialto Grain and Securities Company? A. No sir, Mr. Harlan said to me that there was absolutely nothing against the company, and he said, "if you do not believe it, go and inquire yourself".

Q. So is it a fact that it was on this occasion that you first learned there was any such thing as a complaint against the company? A. Yes sir.

Q. Did you see the Evans letter? A. No sir, I did not and I did not ask to see them?

Q. Was the interview between yourself and Mr. Cochran limited to this?—or did anything further take place, as
305 you recall? A. I had previously told Mr. Cochran, as I stated, that if Maj. Dennis was indicted in the other matter that I expected to help defend him, and then I said to him: "Now, Cochran, I am the counsel for the Rialto Grain and Securities Company. Major Dennis owns the company. He is a stranger to me. I have been assured that the company is organized and its methods are all right. But I do not know, and if anything comes into the department that puts you upon inquiry, any complaints or anything of the kind, I wish you would advise me, because, notwithstanding I am counsel for the company, I am not its counsel here. I cannot be retained under any circumstances to appear in the departmen as a paid attorney."

Q. Now, Senator, at that time did you— A. But there is one more expression I omitted there. I said "Another thing, Mr. Cochran, in case that it should become necessary to recommend summary action on any complaint, disregard my request entirely; because I won't answer any of these complaints and I won't remain attorney of the company or counsel for the company, if it has any trouble with the department."

Q. On that occasion, Senator, did you, by any word you recall, or anything you did, indicate to Mr. Cochran any purpose on your part to interfere in any way with any of the processes of the Post Office department, or to lead him—did you on that occasion attempt to lead him to withhold or abstain from any action that might be found necessary on his part, or on the part of any other officer in the department? A. Not at all.

Q. Have you now substantially given us what occurred on this first occasion? A. Yes, as I remember it.

Q. When, Senator, did you go to the Post Office department the second time? A. Well, with reference to what, Judge?

A. I mean with reference to any of these matters that
306 have been inquired of here? A. I do not remember the date.

Q. Is there anything in any of these letters that will assist you in that direction? A. I have no independent recollection of the date, but the letter is on the 9th of December.

Q. It was of course before the 9th of December, the letter having been written on that day, that you went there? A. Yes, sir.

Q. To which office did you go? A. I went to Mr. Cochran's office, and my recollection is, showed him that letter of, I think it is, December [2rd].

Q. The letter of Mr. Harlan? A. Yes, sir, the letter of Mr. Harlan. Going back a moment, Judge, and looking at this letter of November 20, I think there was some talk between Mr. Cochran and myself, I cannot remember the words, about the custom of hearings on complaints; that is, if complaints were made, unless it was a very aggravated case or required summary action, the parties were always notified and always heard.

Q. That was on the occasion of this first talk you had with him? A. Yes sir.

Q. Now, with reference to that letter of the 9th, of December, about when was it you went to the office of Mr. Cochran? A. Well, I can only give my best recollection that it was on the 9th.

Q. With reference to what did you go there then? A. Hand me that bunch of letters, or give me the letter of Dec. 3rd.

Q. This is the one, signed by Harlan? A. Yes. When I received this letter, the next time I was at the office, in making the rounds of departmental calls some weeks afterwards,
307 I suppose it was, my recollection is that I showed Mr. Cochran this letter, and I did it for the purpose of advising him with reference to this man whom Harlan thought was a fraud or the men. Mr. Cochran said at once "there is no such inspector as Bowman"; that he would like to catch him, and spoke about the other man being a fraud, and I think he then said "There is nothing in this office here against this company in any shape, manner or form, or no instructions gone out", or something, I don't remember.

I could only infer from my letter—

Q. Your best recollection then, is, that this call at the office of Cochran was on the 9th of December? A. That is my recollection.

Q. Did you have any other purpose in going there, or did you indicate to him any other purpose on your part in going there,

than to inquire with reference to two persons named in this letter? A. Nothing at all. And if there is any other statement made, it was volunteered, that was the purpose of my inquiry, and I was there for a moment. I remember very well being there, but, as I say, I cannot say positively it was the ninth.

Q. It appears from the evidence introduced here, that even earlier than the 18th of November there had been filed a complaint, as it is called, of F. R. Fravel. Do you recall any information given to you with reference to any such complaint, on the occasion of your first visit? A. I never heard that there was any complaint against the Rialto Grain and Securities company until after I was indicted, except these two first that were mentioned to me on my first visit.

Q. That will cover the whole thing, Senator. When did you go, if at all, to the office—

308 A. I want to add, if you will allow me, that when I got Mr. Harlan's letter telling me those two cases had been examined and reported nothing in them, or substantially that, I never gave the matter another thought. And speaking in regard to these jackets, I never heard of a jacket until Col. Dyer commenced speaking of it the other day, except once, and that is since I have been indicted and when I was trying to find out in Washington if there were any other complaints against this company.

Q. When, after the 9th of December, did you go to the office of the chief inspector? A. I called there with Maj. Dennis on the 15th day of December.

Q. What was your purpose in going there at that time? A. Maj. Dennis had come on to Washington and brought a copy of his indictment, and a statement of the facts, or purported facts, prepared by yourself and Mr. Harlan. I had spent the evening with him before, and the forenoon of the 15th, and had given him my opinion respecting the case, upon the facts stated. We took a carriage and drove to my office from the New Willard hotel. Maj. Dennis was urging me, after I gave him the opinion, to come back to St. Louis with him. I tried to dissuade him; that it was not necessary—shall I tell what was said there?

Q. No, it is not necessary to go into that at all. A. After we got there Maj. Dennis wanted to make a draft—

Col. Dyer: I don't know what we have to do with all those particulars.

Judge Krum: Q. Come to the interview in the office.

A. We were driving by the office, and I suggested that we make a call on the 4th assistant Post Master General

309 merely to pay our respects.

Q. Did you go to his office? A. We went to his office; he was not in; we waited a few minutes, and then we left his office and went down the winding stairway there. I suggested that we go down that way and make a call at Mr. Cochran's office.

Q. What occurred at Mr. Cochran's office? A. I think it is about as he told it.

Q. You introduced Maj. Dennis to him? A. Yes, I introduced Dennis and I heard some talk there about Dennis' middle name being Cochran, and they talked about family matters.

Q. Your recollection of what occurred is substantially as Mr. Cochran indicated? A. Well, sir, I don't remember anything different, unless it was, unless I said to him something about being Maj. Dennis' attorney.

Q. Unless it is materially different, it is not necessary. A. As he gave it, it is substantially correct.

Q. On that occasion, Senator, did you ever have any other purpose in going to Mr. Cochran's office than to merely present Maj. Dennis? A. No sir, we were driving back from my office to the bank.

Q. That was your purpose in going. Then when did you next go to the office? A. I think it was on the occasion of January 24. Let me see those telegrams and I can tell you (referring to telegrams). No, I haven't any. It was the occasion that he testified about when I went with reference to the records and books of the Brooks Brokerage company.

Q. Was that all that was referred to or discussed on that occasion? A. Yes sir, that was all. There was nothing else talked about.

310 Q. Was your purpose in going there limited to an inquiry or action in regard to the Brooks Brokerage Company? A. Entirely so, yes sir.

Q. Now, when did you go to the office of Cochran again? A. With reference to the Rialto Grain and Securities company? or any matter connected with it?

Q. Yes. A. I don't think—I do not now recall that I was ever there again, although I would not be positive about that Judge. I have tried to think of these mattters as carefully as I could, but departmental calls are so many and varied that it is very hard to do it.

Q. On the occasion of the 5th of February, where did that interview take place? A. At my office,—if you will give me those letters and telegrams, I can tell you. (referring to papers) I received this telegram; I do not remember whether it is in evidence or not.

Judge Krum: In connnection with the Senator's testimony, I will read the telegram, dated St. Louis, Feb. 5, 1903, addressed to J. R. Burton.

Which telegram is in words and figures as follows, to wit: (Counsel reads)

"Feb. 5, 1903, St. Louis, Mo.

"To the Honorable J. R. Burton, Senate Annex, Washing "ton, D. C. Dice delivered our books to State authorities, "where they are held subject to his order. Get order requiring "him to deliver to us. Col. Dyer told me he had no further "use for them".

Q. Now, to what books did that telegram refer? A. To the same books and records.

311 Q. You mean the books of the Brooks Brokerage company? A. Yes sir. They were books that I had been advised had been voluntarily turned over to the authorities in the trial of Maj. Dennis.

Q. How did Mr. Cochran happen to visit your office, Senator? A. Just as he detailed. I asked Col. Smith, my Secretary, to invite him there, and whether he 'phoned or went, I do not remember.

Q. With reference to that interview, has Mr. Cochran substantially stated all that occurred? A. Well, he stated something of it, but he didn't state it substantially. I think he was very much mistaken in one part of it.

Q. With reference to that, what part was that. I showed him this telegram, and he expressed surprise at that part of it which said "Col. Dyer told me he had no further use for them", and said he would look into the matter at once. I told him that I knew nothing about the matter further than he did, but that if Mr. Dice, or Col. Dyer or the Government or anybody connnected with the government, wanted to keep these books, there was no objection, as far as I knew, and if there was, I would not urge any objection. But, unless he could give me some reason why they should be turned over to the State authorities, it would seem that that was not fair and right. He said he would look into it. We then branched off to something of a personal talk, as I remember. Mr. Cochran is from my state, and I knew that he knew of my history. I talked to him about being counsel for this company. I cannot remember just what I said, but reiterated what I had said to him in the first instance that— I am a little ahead there. I told him the employment had come to me, I was very glad to get it—

312 Q. He went over those matters, Senator, and I do not think it is necessary for you to do so. A. I want to call especial atttention to one part of the conversation.

Q. I was going to call your attention to that myself. As I recall it, Cochran stated you made some remark about a desire to practice in the department, or to establish a practice in the department. I will get you to indicate to the jury

whether that is the remark that you made, or, if it is not, what you did say? A. Oh, no.

Q. There is no occasion to consume time with much detail about it, but just let the jury understand generally what your recollection about that is? A. I called attention to the fact that men like Senators Edmunds and Conkling had built up a good practice while they were senators in the courts and as counsel, and in a small way I wanted to imitate them—because he knew my financial condition, that in the panic and the long years after that had followed, I had lost my fortune; and I said "Now Cochran, I am counsel for the company, for a company that has to do with the mails, and I want you to be particular and advise me if you see at any time any wrong doing on the part of that company. Notwithstanding I am not the conservator of the morals of my client, I cannot afford, and will not be their counsel if they have any trouble with the department.

Q. The important part is your seeking to establish a practice in the department. Did you ever at any time undertake anything of that sort? A. Not for one moment, at any time since I have been senator.

Q. As I understand you, after the 22nd of January, or thereabouts, you were not in the office of Mr. Cochran at
313 all? A. Not that I recollect; I think it was the 24th or 25th.

Q. Along about there? A. Yes.

Q. I will get you to indicate to the jury whether, at any time, either to Mr. Cochran as chief inspector of the Post Office department, to the Post Master General, to the 4th assistant Post Master General, or to the Assistant Attorney General for the Post Office department, you ever said anything or ever did anything in the presence of either of them, to indicate a purpose on your part, to influence them at all with reference to any proposed action in regard to the Rialto Grain and Securities company in that department? A. Absolutely none whatever—and I do not think any officer of the Government would say so.

Q. Never mind that, Senator. When were you advised of the fact of your indictment? A. On the afternoon of the 23rd of January last.

Q. Have you had any information from any source that there were any inquiries here, or anywhere else, in reference to your connection with the Rialto Grain and Securities company with regard to the Post Office department? A. None whatever.

Q. From what source did you get your information first? A. Well, I think the Associated Press man brought down a

short dispatch and in a few minutes afterwards I received a message from you.

Q. Do you remember about what time in the day you got my message? A. Well, not certainly but between 3 and 4 o'clock.

Q. Now, how soon after that did you leave Washington for St. Louis, with reference to your appearance here? A. I left in about 24 hours?

Q. Did you come to St. Louis as speedily as possible?
314 A. Yes sir, there was but one train I could have come on sooner.

Q. And when did you get here? A. We were delayed about 22 or 23 hours, and I think arrived on Tuesday afternoon, leaving there on Sunday.

Q. Detained by what? A. Detained by a snow storm.

Q. And how soon after your arrival here did you enter your appearance in court here? A. The next morning.

Q. Now, going back to other matters, Senator, do you recall the conference that Mr. Harlan, yourself and myself had with reference to the indictment against Maj. Dennis, in the office of the Rialto Grain and Securities company on 4th and Olive Streets, in this city? A. Yes sir very well.

Q. On what day was that? A. I think it was the 23rd or 24th of December.

Q. The 24th of December? A. The 23rd or 24th; I think it was the 24th.

Q. The 24th of December, 1903? A. Yes sir.

Q. Do you recall whether Mr. Mahaney was present at that conference? A. I think he went over with us from the Planters' hotel, and then he was in and out. We stayed there until very late that night.

Q. You heard his statement, didn't you, as to the suggestion which he says was made, under which it was arranged that you were not to appear here in that case because of the possibility of creating a difference with Mr. Dice; I will get you to state to the jury whether any such statement as that was made by anybody, or any such suggestion as that afforded from any source? A. Oh, no sir, there was nothing of that kind talked about.

Q. In the month of March, 1903, who terminated the
315 engagement between yourself and the company? A. I did.

Q. Mr. Mahaney as representing the company, or yourself? A. Oh, I terminated it myself.

Q. It was, then, at your suggestion and request that the employment ceased? A. Yes sir.

Q. A statement was made here by Mr. Mahaney, that you requested him to destroy certain letters. What have you to

say with reference to that, to the jury? A. Oh, there was nothing said about destroying letters.

Q. Did you make any such request as that of him. A. Not at all, not at all.

Q. On that occasion, did you see any such letters as he referred to? A. No sir.

Q. Did those letters that Mr. Harlan turned over to you have anything to do with this controversy or anything connected with it? A. Do you mean all his letters?

Q. No sir, I mean those two letters which he says he gave to you, and which you told him afterwards you had destroyed? A. They had absolutely nothing to do, nor was there anything in them that referred in any way to this matter. It was on another subject entirely. I want to state right here, that this letter here of the 20th, and this letter of December 9th, and I think, another one, or whatever letters you had, that Mr. Harlan turned over to you, were turned over to me and I took them to the Southern hotel and had them for 24 hours in my possession.

Q. And then you turned them over to me? A. Yes sir.

Q. I am referring to the two letters which Mr. Harlan said he turned over to you and you afterwards destroyed. Those letters had no connection with this case at all? A. None at all, sir.

316 Q. Did you preserve letters-press copies of the letters you wrote to Mr. Mahaney? A. I cannot say that I did all of them. Until quite recently we only took partial copies. I will explain about that: My stenographer is not rapid, and as far as I can tell, there are some letters that I do not seem to have copies of. That is, at least one or two. But in the main I did. I also want to explain that I do not keep all my letters. We get about 100 a day, and we frequently destroy them.

Q. I will get you to indicate, in a general way, what the course of senators, is in Washington, as you have observed, and what is your own course, in regard to calling at the departments, or responding to inquiries, or requests for inquiries in any of the departments? A. Departmental work is almost half the labor of a senator.

Q. Does he look after such things himself personally or— A. Both ways. Through his secretary and his other help he may have, and, personally as well. I am relieved entirely of the pension work as to myself. I do not think I have seen the pension office for two years.

Q. What do you mean by "pension" work; is that merely inquiring, going to the pension office and making inquiries in response to letters sent, and all that sort of thing? A. Yes, and a great deal more than that. Col. Smith is a lawyer and was a soldier and is very competent and I look upon him as a pension expert. He is very much more familiar with it than I am, and he attends to it all.

Q. He goes there simply for information? A. Oh, yes. I have never gone to a department at any time for hire. Never thought of such a thing.

Q. I will get you to state to the jury whether you received in the month of November, the first payment that was
317 made you by the Rialto Grain and Securities company with the understanding on your part, or with the intent on your part, to accept it as compensation for any service which you had rendered in the post office department for the Rialto Grain and Securities Company in a matter in which the United States was interested? A. On the contrary, I did not suppose there was any matter there at all when the check arrived.

Q. Now, what have you to say with reference to the second payment which was made to you by Maj. Dennis in person in the city of Washington: did you receive that payment as compensation for services which you had rendered the company in any matter that I have indicated? A. Oh no, sir I did not.

Q. How was it with reference to the payment in the month of January, was it the same? A. The same, yes sir.

Q. And the payment in the month of February, the same? A. The same, yes sir.

Q. The payment in the month of March made here in St. Louis? A. The same, yes sir.

Judge Krum: Now—if your Honor will indulge me, perhaps for seeking or undertaking to enlarge upon a matter which has been rather fully covered—and yet I feel we ought to go into it a little further.

Q. Going back to the conference between yourself and Mr. Harlan in regard to the scope of the business of the Rialto Grain and Securities company, and calling attention to the feature of placing securities, I will get you to state to the jury your recollection—of course—briefly—of what Mr. Harlan indicated in that regard; what did he have to say about that feature of the business of the company? A. Mr. Harlan was very much exercised about the idea that Maj. Dennis' Indictment
318 might affect the business—

Q. Pardon me; perhaps I can call your attention directly to what I am driving at myself. What indication, if any was given to you as to any purpose that you might serve

at Washington or elsewhere in regard to this matter of placing securities? A. Well, as I have said, I thought I was wanted just then in the criminal case, and just then, for the benefit of my name as counsel for the company, and then as the securities feature was already to take hold of, that I should try to make myself familiar with securities that could be obtained. Following that up, I made a trip to New York early after I was engaged. I also took the matter up with Senator W. A. Clark of Montana, whom I regarded as an authority. But of course those plans of the company failed.

Q. In the talk between Mr. Harlan and yourself, what did he indicate that they would look to you for in that matter of placing securities? A. They specially said, when they reached that point, that they would want me to get in touch with the trusts companies.

Q. As I understand it, this matter was dwelt on very largely by Mr. Harlan? A. It was dwelt on very largely at the time the contract was made, but nothing substantially was done about it.

(No cross-examination.)

Judge Krum: I desire to say, your Honor, that ordinarily I would not undertake to testify in this case, but in my opinion it is necessary for me to do so.

Chester M. Krum of lawful age, being duly sworn, in
319 behalf of the defendant testified as follows:

Direct Examination

By Mr. Fred Lehmann:

Q. [Q.] Your name is Chester H. Krum, and you are a member of the bar of this city? A. Yes, sir.

Q. You were of counsel for Hugh C. Dennis, in the matter of the indictment heretofore pending against him in this court? A. Yes sir.

Q. Your associates in that matter were Mr. Harlan and Senator Burton? A. Yes sir.

Q. I call you- attention to a conference which was testified to by Mr. Mahaney, held I believe at the Planters House? A. No, not at the Planters House, at the office of the Rialto Grain & Securities Company.

Q. Wherever it may have been? A. Yes sir.

Q. And to his statement that while you and the others named were there, the question of Senator Burton's appearance in court in that case was under discussion, and that it was stated by some one that he ought not to appear, lest his appearance might prejudice, or arouse antagonism on the part of the Inspector Dice? A. Yes, sir.

Q. [Q] What is the fact as to any statement of that kind having been made at that interview, or any other at which you were present, by anybody? A. The fact is, that all the suggestions that were made, and all the directions that were given, on that occasion, were made and given by myself. I arrogated the right to absolutely direct what should be done in that case. And, accordingly, I stated that in my judgment Senator Burton ought not to appear in court, for the reason that it would look, I thought, like overloading the case with lawyers. That if there was any one man who knew anything about section 5480 of the Revised Statutes of the United States, it was myself.
320 That I had not only cut my eye teeth on that Statute, but every tooth I had. That was the idea conveyed. And I, nor anyone else, at that interview, never made the slightest suggestion that Senator Burton was not to appear here, because of any friction, or possible friction, between him and Inspector Dice, or any body else.

Q. Was Inspector Dice's name involved in that connection? A. Not at all, sir, no, sir.

Defendant Rests.

Court here took an adjournment till Saturday, March 26, 190, at ten o'clock A. M.

Saturday, March 26, 10.00 A. M.

Court reconvened, in pursuance to the foregoing adjournment.

Col. Dyer: It is admitted by the defendant that his two letters, one bearing date January 19, 1903, and the other bearing date February, 11, 1903, were never in the possession of Judge Krum or the defendant after they were written, or of Mr. Harlan at any time.

Judge Krum: The admission goes to the extent that those two letters were not among those that I practically turned over to Col. Dyer.

W. J. Vickery, recalled for further direct examination by Col. Dyer, having been heretofore duly sworn, testified as follows:

Col. Dyer: Q. You heard the testimony of W. W. Smith? A. Yes sir.

321 Q.—in which he said "When the Senator got through, Mr. Cochran said 'well, Senator, I will make one statement; "'You did say that you were not employed to go to the "'department by anybody, and that you could not be employed "'to go to the department for anybody, for pay or against "'the Government.'" I will ask you to state whether or not any such statement was made in that interview?

Judge Krum: I object as not competent by way of rebuttal, for the reason that the Government undertook to show by this witness what occurred and what was said in full upon the occasion referred to, and elicited the testimony from [—] to that effect, and this is now not testimony in rebuttal.

Objection overruled. To which ruling of the court the defendant, by his counsel, then and there duly excepted.

Q. (Last question read) A. No such statement was made in that interview.

Cross-Examination

By Judge Krum:

Q. What was said on that subject? [—] As I gave yesterday—or the day before—my recollection is covered in that: that Senator Burton protested to Mr. Cochran that he had a number of times made the statement that he did not desire to antagonize the department.

Q. You mean to say that Mr. Cochran did not make any statement at all? A. I think I said in my testimony that as I recollected Mr. Cochran said he could make no statement, at that time, and that Senator Burton, said he did not desire to antagonize the department.

322 Judge Krum: That is, you have given your recollection of what this occurrence was, and Col. Smith has given his. That is all.

Which was all of the evidence introduced at the hearing of said cause, as aforesaid.

Thereupon the defendant asked the court as to each count of the indictment to direct the jury to return a verdict of not guilty which the Court refused as to each of said counts to which ruling as to each of said counts the defendant then and there duly excepted.

Thereupon the Court charged the jury as follows:

323 Gentlemen of the Jury:

You have patiently given attention to the evidence and argument of counsel in the case which is now about to be submitted to your final determination.

The case is important because the accused is a man occupying a high and honorable position in the public service, whose reputation and usefulness may be seriously affected by your verdict. The case is important too, because it involves an alleged violation of the law, intended to promote the public welfare, and secure efficiency in the public service.

In approaching a final consideration of the case, you should bear in mind that the law, and the courts of the land organized to administer it, are not and cannot be any respecters of persons. The high and the low, the weak and the powerful must alike be subject to their behests.

Approach a final consideration of this case, therefore, with becoming gravity, and allow but one purpose to actuate your conduct, and that is to determine justly and fairly, as impartial and honest jurors, the issues now to be submitted to you.

The indictment against the accused in this case is founded upon Section 1782 of the Revised [States] of the United States, which is as follows:

"No Senator, Representative, or Delegate after his election and during his continuance in office, and no head of a Department, or other officer or clerk in the employ of the Government, shall receive or agree to receive any compensation whatever, directly or indirectly, for any services rendered, or to be rendered, to any person, either by himself or another, in relation to any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter or thing in which the United States is a party, or directly or indirectly interested, before any Department, court-martial, Bureau, officer, or any civil, military, or naval commission whatever."

324 You will observe from the reading of this statute that a Senator of the United States (among other persons and officers mentioned in the act) is prohibited from receiving any compensation whatever, directly or indirectly for any services rendered or to be rendered before any Department of the Government, to any person in relation to any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter or thing in which the United States is a party, or in which the United States is directly or indirectly interested. The reason of this prohibition is: to promote integrity and efficiency in the discharge of official duties, and to maintain proper discipline in the public service.

To permit a Senator of the United States, whose influence, by reason of the high position he holds, is naturally persuasive and weighty with executive officers, to take compensation from persons for services rendered such persons before an executive department, would it was thought, create a duty in favor of such persons arising from the implied obligation of fidelity to the client, from whom he should accept a fee, inconsistent with those relations of "ready confidence, and entire unreserve", which ought to exist between the legislative and executive departments of the Government in the promotion of the public weal, and in the enforcement of the laws of the land.

As you are doubtless aware the post-office department is one of the great executive subdivisions of the government, established by the congress for the purpose of aiding the President of the United States in the discharge of his executive duties in mattters relating to the postal service.

A chief officer called the Postmaster General, who by law is made the head of the department, is placed in charge of it and power is expressly conferred upon him by law, upon evidence satisfactory to him that any person or company is engaged in conducting any scheme or device for obtaining money or property of any kind, through the mails of the United
325 States, by means of false or fraudulent pretenses, representations or promises, to instruct any postmaster, wherever they may be located throughout the country, who may receive at their post-offices any letters directed to any such persons or company, to return such letters to the postmaster at whose post-office such letters may have been mailed with the word "Fraudulent" plainly written or stamped on the outside thereof, to be by him delivered back to the writers thereof.

It is thus seen that power is given to the Postmaster General to investigate by any means within his power, whether any person or company is making fraudulent use of the mails as just alluded to, and when he becomes satisfied by such evidence as he may secure of such fraudulent use, he has the authority under the law to put a stop to such use, in the way and manner already stated.

The purpose of this law is obvious; the facilities of the United States mail service are intended to subserve the honest purpose, whether social or business of the public, and not to subserve the fraudulent purposes of any member of the community.

To more effectually accomplish this purpose Congress, passed the Act known as Section 5480 of the Revised Statutes. This is a criminal statute, which provides in substance: That if any person devises a scheme or artifice to defraud, by means of the Post-Office establishment, and actually mails any letter, book, writing, circular, pamphlet or advertisement, or takes or receives any such letter or other article just mentioned from the mails of the United States, by way of executing such scheme or artifice to defraud, such person shall be guilty of an offense, and punished as in the section specified.

Enough has been pointed out by these provisions of the law to clearly show that congress has made substantial provisions for the enforcement of the postal laws of the United States, and has imposed upon the Postmaster General, as the head of the

Post-Office Department, the authority under certain circumstances to make an initial inquiry with reference to the fraudulent use of the mails.

While this duty is being discharged, and the initial
326 inquiry is being made by the Post-Office Department, with a view of ascertaining and determining what action the Postmaster shall take in a given case, that is: whether he shall prohibit the use of the mails, and require letters to be stamped "Fraudulent" in the way and manner which I have already explained, the law prohibits any Senator, Representative, Delegate, head of department, or other officer or clerk in the employ of the governmnt from taking any compensation whatever for services rendered or to be rendered before the Department to any person in the matter of such inquiry.

The Grand Jury of this District has found an indictment against the accused in this case, which charges him with having violated the provisions of Section 1782 of the Revised Statutes, already read to you.

The first five counts of the indictment relate, generally speaking, to one transaction, and present five different phases of that transaction.

The first count charges in substance that the accused on or about March 26, 1903, while a Senator of the United States, received, at St. Louis, Missouri, the sum of Five Hundred Dollars, from the Rialto Grain & Securities Company, for services theretofore, between November 22, 1902, and March 26, 1903, rendered by him to that company before the Post-Office Department, in a matter there pending in which the United States was directly interested, namely; whether that company had so violated the laws to which I have already called your attention as to require the Postmaster General, in the exercise of his duty, to stop the use of the mails by that company, and to cause letters sent to it by mail to be stamped "Fraudulent" and returned to the writers, as set out in said count.

The services alleged in said count, and in all the counts of the indictment to have been so rendered, consist of visits to the Postmaster General, the Chief Post-Office Inspector and other officers of the Post-Office Department, and of representations and statements made to them with a view, and for the purpose of inducing such officers to decide the question pending
327 before the Department in a manner favorable to the Rialto Grain & Securities Company.

The second count is practically the same as the first. It charges that the accused received at St. Louis, Missouri, the

sum of Five Hundred Dollars from the Rialto Grain & Securities Company, on March 26, 1903, for services rendered that company before the Post-Office Department in the same matter as stated in the first count, with this change only, that the United States was indirectly interested in the matter, instead of directly, as charged in the first count.

The third count is the same as the first, except that it charges that the accused received the Five Hundred Dollars on March 26, 1903, from W. D. Mahaney, an officer and employee of the Rialto Grain & Securities Company, instead of from the company itself, as charged in the first count.

The fourth and fifth counts have been disposed of by an entry of a nolle prosequi by the government, and you need give no attention to them.

Before advising you explicitly concerning the first, second and third counts of the indictment, it seems best to explain generally that section 1782 of the Revised Statutes, under the provisions of which this indictment was found, prohibits the receipt of compensation by a Senator of the United States, (among other officers) for services rendered before a Department in a matter or thing in which the United States is directly or indirectly interested.

It is doubtless by reason of this phraseology of the act, that the pleader in preparing the indictment made the two charges as found in the first and second counts; in the one (the first) charging that the United States was directly interested, and the other, (the second) charging that the United States was indirectly interested in the matter or thing pending before the department in relation to which the services were charged to have been rendered.

With respect to this feature of the indictment, and to the statute relating to the "interest" of the United States, in matters pending before the Post-Office Department, the court declares the law to be: That the United States within the true meaning of Section 1782 was interested, both directly
328 and indirectly, in the determination of the question, if such question was pending before the department, whether the Rialto Grain & Securities Company was so violating the law as to require the Postmaster General in the performance of his duty, under the law, to stop its use of the mails, and to stamp its letters "Fraudulent" in the way and manner already stated, and as fully set forth in the indictment.

The United States owed the duty to all its citizens to see to it that the law was faithfully enforced, and it was interested in the highest legal sense of the term, within the true meaning of the Act of Section 1782, both directly and indirectly, in the question whether the law was so being violated by the Rialto Grain & Securities Company, as to authorize or require its executive officer, the Postmaster General to exercise the power conferred upon him, and perform the duty imposed upon him by the law.

In determining whether the matter or thing charged in the several counts of the indictment was so before the Department, "or pending before the department" as charged in the indictment, the court charges you that the inquiry by the Post-Office Department as to whether the Rialto Grain & Securities Company was violating the postal laws, need not have been the result of a formal proceeding, suit or charge, after notice to the company, as is usual in proceedings in the courts of law, but that the matter was "before the department" or "pending before the department" within the meaning of the law, if the Postmaster General had had the matter called to his attention, whether by written communication or otherwise, and had set on foot, and was then and thereafter conducting, an investigation in the usual way prescribed by the rules and regulation of the Department which have been read to you for the purpose of satisfying himself whether he should exercise the power conferred upon him by the law with regard to the matter.

With these general observations, let us come to a consideration of the particular charges contained in the first, second and third counts of the indictment.

If you find from the evidence before you that the ac-
329 cused was, on or about the 26th day of March, 1903, a Senator of the United States, duly qualified and acting as such, and at that time, while he was so a Senator, there was pending before the Post-Office Department of the United States, an inquiry as to whether the Rialto Grain & Securities Company was so violating the postal laws as set forth in these three counts, with a view and to the end of enabling the Postmaster General to determine whether he should instruct the Postmaster at St. Louis to refuse delivery of mail to the Rialto Grain & Securities Company, and stamp its mail "Fraudulent" and return the same as stated in these counts, and if while such matter was so pending before the Department the accused, knowing that such matter was so pending, accepted and received at St. Louis, Missouri, within this District, from the Rialto Grain & Securities Company, or any of its officers, acting for and in behalf of said company, the sum of Five Hundred Dollars for services, of the kind set forth in the counts, as already stated

by me, theretofore, on any days between November 22, 1902 and March 26, 1903, rendered by him for the company, before the department, in the matter of that inquiry, then it will be your duty to find the defendant guilty as charged in the first and second counts of the indictment, otherwise to find him not guilty on these counts.

The third count wherein it is charged that the accused on March 26, 1903, accepted and received from W. D. Mahaney, an officer and employee of the Rialto Grain & Securities Company, the sum of Five Hundred Dollars, for services rendered the company before the Department, is practically the same as the first count.

It was obviously intended by the pleader for the purpose of informing the accused of the medium through which the money was received from the Rialto Grain & Securities Company, and if there is a verdict of guilty on the first and second counts, there should be no conviction on this third count, because as already stated, it is but another way of charging the same offense as is charged in the first and second counts.

The sixth count of the indictment relates to a transaction different from that involved in the first three counts. This count charges that the accused on or about November 22, 1902, at St. Louis in this District accepted and received a certain check of that date, for the payment of money in the sum of Five Hundred Dollars; that the check was drawn by the Rialto Grain & Securities Company upon the Commonwealth Trust Company of St. Louis, payable to the order of the accused, and by him indorsed, and afterwards paid to him at St. Louis, Missouri, by the said Commonwealth Trust Company, for services of the kind already called to your attention, theretofore rendered by the accused to the Rialto Grain & Securities Company, in a matter then pending before the Post-Office Department, in which the United States was directly interested.

This count then proceeds to set out that the matter so pending before the Post-Office Department was whether the Rialto Grain & Securities Company had been violating the laws of the United States as already explained, that is to say: whether it had so devised a scheme to defraud, contemplating the use of the mail service, and actually making use of the mail service in executing this scheme to defraud in violation of the provisions of section 5480, to which I have already referred, so as to require the Postmaster General in the exercise of the power conferred upon him by law, to direct the Postmaster at St. Louis, Missouri, not to deliver to the said Rialto Grain & Securities Company any mail, but to return the same with the word

"Fraudulent" stamped thereon, upon any and all letters addressed to the Rialto Grain & Securities Company, and sent through the mails to that company at St. Louis, Missouri.

The elements of the offense charged in this count are the same as those charged in the first and second counts. If you find from the evidence, by the measure of proof which I shall presently state, that the accused, while a Senator of the United States, on or about the 22nd day of November 1902, knowingly *received at St. Louis, Missouri*, the proceeds of the check described in this count, from the Commonwealth Trust Company, as compensation for his services theretofore rendered to the Rialto Grain & Securities Company, of the kind and in the way and manner stated in this count, before the Post-Office
330 Department in the matter so alleged to have been pending before the department, and known by him to have been so pending when he received the money, then your verdict on this sixth count must be guilty, otherwise not guilty.

The Government claims that the compensation referred to in this count was sent to the accused by the Rialto Grain & Securities Company, in the form of a check, drawn by it on the Commonwealth Trust Company, payable to the order of the accused, by mail; that he received the check representing this compensation at Washington, in the District of Columbia, and then and there indorsed the check, deposited it to his own credit in the Rigg's National Bank at Washington; that the last mentioned bank afterwards forwarded the check by and through its correspondents to St. Louis for payment by the Commonwealth Trust Company, upon which it was drawn, and that the Riggs' bank, and its correspondents in all this matter became and were the agents of the accused for securing this money, and when the money called for by the check was finally paid at St. Louis, Missouri, by the trust company, on which it was drawn, it amounted to a payment of that money to the accused at St. Louis, Missouri. This suggests an important feature of the case, for the reason that unless it be true that the accused received the money represented by and paid on this check at St. Louis, this court would have no jurisdiction to try the case.

The Constitution of the United States confers upon the accused in every criminal case the right to be tried by an impartial jury of a state and district wherein the crime shall have been committed.

The receipt of the money is the gist of the crime, charged against the accused, and if he did not receive it in this district, in fact in St. Louis where he is charged to have received it, he is not amenable to the law in this District, and cannot be con-

victed in this court on this sixth count. Accordingly, it becomes your duty to ascertain and find from the evidence, what were the true relations between the accused and the Washington bank, when he deposited the check in question with that bank, and what was the understanding between them
231 as to their respective rights in relation to the check and the proceeds thereof. On this question the court charges you as follows:

If it was the intent and understanding of the Washington bank and the accused at the time the latter deposited the check in question with the former, that the bank should forward the same in the usual course by and through its correspondents to St. Louis, for payment, and that in so doing it, and its correspondents should act only as the agent of the accused for that purpose, then the final payment by the Commonwealth Trust Company at St. Louis, of the check to the correspondents of the Washington bank, would amount in law to a payment in St. Louis as charged in the sixth count, of the amount of the check to the accused. If on the contrary it was the understanding and intent of the Washington bank and the accused at the time the latter deposited the check in question with the former, that the bank should become the purchaser of the check, and should thereafter be the absolute owner thereof, and not act as just indicated, as the agent of the accused in the collection of the check, then the payment at St. Louis by the Commonwealth Trust Company, would amount in law to a payment to the Washington bank and not to the accused. In the latter event no crime would have been committed by the accused in this District, by reason of the check referred to in the sixth count of the indictment.

In order to find the accused guilty on the sixth count, you must find from the evidence, by the same measure of proof as is required in all criminal cases, that the check referred to in the sixth count, was deposited by the accused in the Washington bank, for collection, and that the bank was to act in collecting the same, as the agent of the accused, and not as the owner of the check in question.

In determining this issue, you are at liberty to and should consider all the evidence adduced; the actual transaction as it occurred at the Riggs' bank, where the check was deposited, the check itself and all its endorsements, the rights and privileges where were immediately accorded the accused upon making the deposit, the actual conduct and purpose of the
232 Riggs' bank in forwarding the check to St. Louis for payment, the customary conduct and usage of that bank, and all banks in Washington at the time so far as shown by the

proof. And if from all these facts and all other facts disclosed by the proof, you find that the check in question was in fact deposited by the accused, with the intent and knowledge on his part, as well as on the part of the bank itself, that it should be forwarded to St. Louis for collection for account of the accused, the bank and its correspondents acting as agents for the accused to make such collection, you should find that when the same was actually paid to the last endorser on the check at St. Louis, by the trust company upon which it was drawn, it was in contemplation of law, paid to the accused himself.

If on the contrary you find from the evidence, that the accused and the Riggs' bank at the time of the deposit of the check in question, understood and intended that the bank should become the purchaser of the check and be its absolute owner, then the subsequent forwarding of it to St. Louis for payment was the act of the bank itself, and the final payment of the check by the trust company at St. Louis, was a payment not to the accused, but to the bank and if such is the fact your verdict on the sixth count must be not guilty.

The seventh, eighth and ninth counts of the indictment are similar in all respects to the sixth count, with the exception that in the seventh count the accused is charged with having received a check and the proceeds thereof, dated December 15th, 1902.

And in the eighth count with having received a check and the proceeds thereof, dated January 22, 1903.

And in the ninth count with having received a check and the proceeds thereof, dated February 16, 1903.

The issues with respect to these counts are the same as the issue made by the sixth count with respect to the check therein involved, and the facts to be found by you in determining your verdict on these counts are the same as already stated in discussing the sixth count, except only as to the dates when
333 the compensation is alleged to have been received by the accused, and the principles of law governing your action on these counts as already announced in discussing the sixth count are applicable here, and do not require further statement. You will have the Indictment before you in your retirement and you will be able to distinguish between these counts.

As you have observed during the progress of the trial, one of the sharp issues of fact for you to determine in reaching a verdict on the several counts is: whether the services rendered by the accused for which he received compensation from the

Rialto Grain & Securities Company, were rendered to that company, before the Post-Office Department, or whether they were general professional services rendered that company, by way of advice, counsel or otherwise, in other matters not before the Post-Office Department.

Notwithstanding the fact that the accused was a Senator of the United States he had the legal right, so far as this case is concerned, to practice his profession in any and all of its phases, and to receive compensation therefor in any way and manner, and on any terms as to compensation or otherwise deemed by him best,—except that he could not receive compensation for services rendered before the Post-Office Department, in any matter pending there in which the United States was interested as already explained.

And in fact the law does not prohibit him from merely rendering services in such matters before the Department. The only prohobition in this respect is against receiving compensation for such services, and thereby putting himself into such relations with and under such obligations to the person from whom such compensation is received as are usually created by that act.

In determining whether he received the compensation for the services stated in the indictment to have been rendered before the Department, or whether he received the compensation which he did receive for other services, you have before you the evidence of many witnesses, correspondence between the accused and officers of the Rialto Grain & Securities Company, and all the other facts and circumstances brought out in evidence together with all fair and reasonable inferences which may be drawn from them.

And in determining each and all the other issues of this case, you should also consider all the evidence, facts and circumstances in evidence, as well as all fair and reasonable inferences which may be drawn therefrom.

334 You have patiently listened to all this testimony, have observed the demeanor of the witnesses, have heard the analysis and arguments of faithful counsel, and I do not deem it necessary or advisable to make comment concerning this testimony, except to say that under the provisions of Section 1782, upon which this indictment is found, it is immaterial whether the services if rendered, as charged in the indictment were apparently or really antagonizing, or opposing the government, or whether they were apparently or really in harmony with the interests and purposes of the government. The

law probihits a Senator of the United States from receiving any compensation whatever for any kind of services whatsoever, rendered to any persons before the department, in matters of inquiry, or investigation pending there, like that charged in the indictment.

The gist of the offense denounced by Section 1782, is the receiving of compensation for services therein referred to. As already said the law does not prohibit the mere rendering of services by a Senator before the department, but the intent and meaning of the law obviously is: that if a Senator goes before the department, to render service there to any one, in a matter pending there, in which the United States is interested, he shall be under no obligation inconsistent with his rendering absolutely disinterested services in such matter.

There is evidence before you relevant to the exact terms and stipulations of the original contract of employment of the accused, by the Rialto Grain & Securities Company.

This evidence was admitted, not because that contract was in and of itself an issue in this case, but because it was relevant and material, throwing light upon the real issue, that is: whether any services were rendered by the accused before the department, for which he received compensation.

As stated several times during the progress of the trial, you are not to try or determine in this case, the issue whether the Rialto Grain & Securities Company, was actually engaged in a fraudulent business or not. The issue here involved in that respect is: whether an inquiry or investigation was
335 pending before the Post-Office Department concerning the business of that company, with a view of enabling the Postmaster General to determine whether he should forbid the use of the mails to that company as already explained.

Every defendant in a criminal case is presumed by the law to be innocent. This presumption exists in favor of the accused in this case, and will abide with him, as his sure protection until his guilt is satisfactorily established by the evidence.

From this general principle flow certain other necessary conclusions:

First: The burden of proof of the guilt of the accused rests upon the government.

Second: The government is required to prove his guilt by evidence which satisfies you thereof beyond a "reasonable doubt." By "reasonable doubt" as the words are here used is

meant a doubt for which some good reason based on the evidence, or want of evidence in the case, can be given.

"Speculative impressions or possibilities resting upon mere conjecture, not arising or deducible from the proof or want of proof, or a doubt suggested by the ingenuity of counsel, or by your own ingenuity, or one born of a merciful inclination, to permit the accused to escape the penalty of the law, or one prompted by sympathy for him, or those connected with him, not warranted by the proof, or want of proof, is not what is meant by 'reasonable doubt.'"

Bearing in mind those observations, it becomes your duty to carefully consider the evidence before you, and if as a result of such consideration "you can and do entertain a 'reasonable doubt' as to the guilt of the accused, it will be your duty to give him the benefit of the doubt and acquit him. If on the other hand the whole evidence, when carefully examined and considered, produces in your mind a settled conviction or belief in the guilt of the accused, such a conviction or belief as you would be willing to act upon in the important affairs of your life, you may be said to be free from 'reasonable doubt,' and should accordingly, find a verdict in accordance with that conviction and belief."

336 You are the sole judges of the credibility of the witnesses, who have given evidence in this case, and the weight to be attached to their testimony, but as to the principles of law governing the case, it becomes your duty according to the division of responsibility, which the law has made between the court and jury, to acknowledge my supremacy, and to take every expression or conclusion of law, which I may have announced in this charge, as your controlling guide.

Upon finding a verdict of guilty or not, your duty, gentlemen, is at an end. If the verdict be guilty, the responsibility of fixing the punishment is devolved upon the court. .

You have heard all the evidence, the argument of counsel, and the charge of the court concerning the law of this case, and it now becomes your solemn duty, under the oaths which you have taken, and under the heavy obligation resting upon you as honest men, zealous to perform your full duty in this case, to determine the question of guilt or innocence of the accused, without any fear or favor whatsoever, and thus to make good the promise made by you at the outset of this trial, that you could and would try this case impartially and fairly upon the evidence adduced in court, the instructions as to the law of the case given by the court and upon them alone.

337 The Court: I have been asked by counsel for defendant to give certain declarations here, and while I think they have, in the main, been covered by the charge, yet I will give them to you.

These are abstract propositions of law, which I give in connection with the charge, as perhaps more fully amplifying it. I am willing to give them, inasmuch as they are asked, and they contain general propositions of law.

The Court gave the following instructions requested by counsel for defendant:

1. That whether the defendant can be adjudged guilty upon the indictment depends upon his having received compensation for a service rendered to the Rialto Grain and Securities Company in seeking to prevent the issues of a "fraud order" by the Postmaster General against the company. The service must have been rendered in the Post Office Department before some officer charged with the matter of inquiry, and must have been intended to induce such officer to report favorably upon the matter before him, or to decide some question touching a proposed, or contemplated, "fraud order" favorably to the company. The offense consists in the rendition intentionally of the service indicated and the receipt of compensation knowingly for the service so intentionally rendered. It was the privilege of the defendant, as a Senator of the United States, to make inquiries in the Post Office Department of any of its officers in regard to complaints against the Rialto Company, and to make reports as to the same to the Company. The acts of the defendant in the Department must have been in the way of steps against the United States to prevent the issuance of a "fraud order", if one was contemplated, or to bring about a favorable result in an inquiry which might lead to such an order, if such an inquiry was on foot in the Department.

338 If inquiries as to complaints were merely made, and no attempt made to influence any officer in the discharge of his duty, the defendant committed no violation of the statute, no matter what reports he made to his client, the Rialto Grain and Securities Company.

2. Defendant had the right to engage, for compensation, as counsel in the case of the United States v. Dennis, and to do whatever was necessary and proper to be done in the conduct of the defense, including inquiry and investigation at the Postal Department respecting evidence which might exist there, favorable or adverse to Dennis, and no service rendered by the defendant in connection with the defense of the case against Dennis can be considered in support of the indictment.

3. Any inquiries made, or services rendered, by the defendant in the Postal Department concerning the books of the Brooks Brokerage & Commission Company, and only concerning those books, are not to be considered as supporting any charge of the indictment.

4. Defendant had the right to make inquiries at the Postal Department or of Postal officials as to the existence, or non-existence, of charges against the Rialto Grain and Securities Company, and the making of such inquiries, whether for his own information and guidance, or for the information and guidance of the company, will not support the indictment if there was no effort or purpose thereby to influence the action of any official of the Government.

5. Before the defendant can be held guilty of the charge against him, it must be proven that he did something in connection with the investigation of the Rialto Grain and Securities Company by the Postal Department intended to influence the action of some official of that Department with respect to such investigation, and that defendant was paid, and received compensation, for so doing.

6. As to any claims or demands made by individuals
339 against the Rialto Grain and Securities Company, the defendant had the right to act as counsel for the company, and as such counsel had the right to do whatever was necessary and proper to conserve the legal rights and interests of his client as to such claims or demands, and he had the right in that connection and for that purpose to make inquiry of any Department to ascertain the identity of such persons and whether they held the positions they claimed to hold

8. To sustain the charge against the defendant, it is not sufficient to show that he was employed as counsel by the Rialto Grain and Securities Company, and received compensation as such, and that while employed as General Counsel he rendered services in or about the Postal Department, but it must be further shown that the services rendered by him in and about the Postal Department were so rendered as within the scope and purpose of his employment, and were part of the services which he was to render as General Counsel and for which he was to receive, and did receive compensation.

9. The presumption is that any agreement which parties may make, and which is lawful according to its terms, is lawfully intended, and anyone asserting that such an agreement is merely a cloak or cover for an illegal purpose, must prove the same; and the agreement in this case between the Rialto Grain and Securities Company and the defendant, engaging

him to act as its general Counsel, is to be presumed to have meant what the parties thereto said; unless it is shown that the agreement was a mere cover for an ulterior purpose, and that it was, in fact, intended by the parties that the defendant should render services in and about the Postal Department and was to be compensated therefor.

12. The court charges the jury that a Senator of the United States is privileged from arrest during his attendance upon the Senate during its sessions, that the defendant was
340 so privileged and the Senate of the United States was in session at the time when he was indicted, that the defendant appeared to the indictment without process having been served on him and when he could not have been compelled by law to answer, plead or stand for trial, and that the fact of the waiver of his privilege by the defendant may be considered by the jury upon the question of his guilt or innocence under the indictment.

341 The following Instructions requested by the defendant to be given to the jury, were by the Court refused:

(7) The evidence of what was done by the defendant in the matters of McGowan, Bowman and Shove cannot be considered by you as supporting any charge of the indictment.

(10). If the checks of the Rialto Grain and Securities Company, described in the indictment, were sent to the defendant, and received by him in the city of Washington, D. C., and were by him deposited in the Riggs National Bank in Washington, and the bank gave him credit for the amount of such checks as the same were deposited respectively, and the defendant had the right at once to check against the same and to draw out such money from the bank, and the bank sent the checks to St. Louis and presented them for payment, and they were paid, then the jury are instructed that the checks and the money thereon were received by the defendant in the city of Washington.

(11). The jury are instructed, that after the defendant endorsed the checks in question to the Riggs National Bank of Washington, D. C., and had received credit, in his account with the bank for the amount of such checks, the checks became the property of the bank, and the bank had the right to do with the checks whatsoever it would, and it was under no obligation to account to the defendant for said checks of their proceeds.

The Court: The jury may now retire. The court will not adjourn, but remain in session probably for twenty-four hours, and in the event you agree upon a verdict, I will come here,

and for that purpose can be notified, and will receive the verdict at any time within the next twenty-four hours.

342 The Court at this juncture handed to a member of the jury as they were retiring, a full copy of the charge and the instructions given at the instance of the Defendants Counsel, which were taken into the jury room.

Judge Krum: We except to that part of the charge which states that the law prohibits a Senator of the United States from taking compensation, with reference to an inquiry of the description lodged before the Department. That is not exactly the language of the charge, but I intend to indicate that part of it.

The Court: It is intended to indicate that part of the charge which prohibits the taking of compensation for services rendered, as specified in the indictment?

Judge Krum: No, sir; on the theory that it was compensation taken in a matter in which the United States was interested. I do not remember the exact language of the charge, but that will perhaps sufficiently indicate it.

The Court: That may be considered excepted to. I will allow any exception to the charge which re-states the propositions of law adversely decided on the demurrer.

Judge Krum: Under counts six, seven, eight and nine, the defendant excepts as to that part of the charge which submits the question of fact to the jury in regard to the matter of payment.

The Court: That is clear enough; I can identify all of that.

Mr. Lehmann: We have a difference of opinion about the check matter.

Judge Krum: Under counts one, two and three, and in fact under all of them, we except to that part of the charge which directs the jury, that if they find there was such an in-

343 quiry pending, then the United States was interested, both directly and indirectly.

The Court: That is the same as involved in the demurrer?

Judge Krum: Yes sir.

Mr. Lehmann: As I understand the charge, there is one matter I wish to except to; I think it warrants a finding. Beginning with the first and second payments, to the payment made on March, 26th, that if there were any services rendered theretofore and since the 22nd of November, they could find defendant guilty on that count.

The Court: No, the charge is, that if he received compensation on that day for any services rendered at any time between November 22nd and March 26th.

Mr. Lehmann: That is what I thought. Following that up with the other counts, the sixth, seventh, eighth, and ninth, as to

each one of those, if he received compensation upon the particular day involved in that count, for any services rendered before that time, there can be a conviction upon that.

The Court: Yes.

Mr. Lehmann: My exception to that is, that it authorizes several convictions for one offense—if I make my point clear.

The Court: I understand.

Mr. Lehmann: The conviction would be authorized under that for the same services under each one of the counts, assuming it had been rendered at the earliest part of the period.

The Court: You may fix up that exception. I take it, the receipt of the compensation is the gist of it.

Judge Krum: Your Honor's charge as written goes to
344 the jury, does it not?

The Court: Yes.

Mr. Lehmann: There were declarations of law not given.

The Court: I refused those on the subject of the checks.

Mr. Lehman: To the refusal of those we except, and also to the refusal to give the seventh instruction asked by us.

The Court: All exceptions are allowed in the spirit in which they are asked, and there will be no confusion about that.

The court then took an indefinite recess.

The jury retired in custody of the Marshal and remained in such custody considering of their Verdict, with the indictment, General charge, and instructions in their possession from the time of retiring at 8 o'clock Saturday evening March 26th, until 10 o'clock Monday morning March 28th, 1904. At last named hour they appeared in Court bringing with them the copy of the charge and the instructions and upon request of the Court handed the same to the Court with a request for further advice as stated in the following communication.

March 28th, 1904, 10.00 A. M.

Court reconvened, pursuant to foregoing adjournment, and the following proceedings were had:

The Court: I have received from the foreman of the jury this communication with the request that I make further explanation if deemed proper. The communication is:

"A juror claims that as Senator Burton was employed by the
"Rialto Grain and Securities company as general counsel
345 "such fact did not prohibit him from rendering such
"service before the Post Office Department. The juror's "view, he states, is obtained from page 11, last paragraph, and "page 12, of Judge Adams' instructions in third paragraph. "Said jurors while believing that Senator Burton did at the in-

"stance of the Rialto Grain and Securities Company visit the "Post Office Department at Washington and perform the serv- "ices as shown by the evidence, yet that as the report of the St. "Louis Post Office Inspector showed that there was nothing in "the complaint, the Senator was not guilty of any wrong doing."

I think, gentlemen, that the communication made to the court shows a failure to apprehend the charge of the court and the instructions of the court in respect to the questions which are submitted by this communication. The court in the charge made this statement:

"To permit a senator of the United States, whose influence, "by reason of the high position he holds, is naturally persuasive "and weighty with executive officers, to take compensation from "persons for services rendered such persons before an executive "department, would, it was thought, create a duty in favor of "such persons arising from the implied obligation of fidelity to "the client from whom he should accept a fee, inconsistent with "those relations of ready confidence and entire unreserve which "ought to exist between the lgislative and executive depart- "ments of the government in the promotion of the public weal "and in the enforcement of the laws of the Land."

The Court also said in the charge, paragraph 2, of page 12, as follows:

"Notwithstanding the fact that the accused was a senator "of the United States he had the legal right, so far as this case "is concerned, to practice his profession in any and all of its "phases, and to receive compensation therefor in any
346 "way and manner, and on any terms as to compensation "or otherwise deemed by him best, except that he could "not receive compensation for services rendered before the Post "Office Department, in any maanner pending there in which the "United States was interested as already explained."

In the first paragraph on page 15 the Court said:

"You are the sole judges of the credibility of the witnesses, "who have given evidence in this case, and the weight to be "attached to their testimony, but as to the principles of law "governing the case, it becomes your duty according to the "division of responsibility, which the law has made between "the court and jury, to acknowledge my supremacy, and to "take every expression or conclusion of law, which I have an- "nounced in this charge, as your controlling guide."

In the light of this I will now read the two clauses which the foreman reports that there is a construction put upon [judtifying] the suggestion made in the communication. One is, as said, the last paragraph of page 11 and reads as follows:

"As you have observed during the progress of the trial one "of the sharp issues of fact for you to determine in reaching "a verdict on the several counts is: whether the services ren- "dered by the accused for which he received compensation from "the Rialto Grain and Securities Company, were rendered to "that company, before the Post Office Department, or whether "they were general professional services rendered that Com- "pany, by way of advice, counsel or otherwise, in other matters "not before the Post Office Department."

347 The third paragraph on page 12 to which attention is called reads as follows:

"Notwithstanding the fact that the accused was a senator "of the United States he had the legal right, so far as this case "is concerned, to practice his profession in any and all of its "phases, and to receive compensation therefor in any way and "manner, and on any terms as to compensation or otherwise "deemed by him best, except that he could not receive compen- "sation for services rendered before the Post Office Department "in any matter pending there in which the United States was "interested as already examined"

It would seem that if attention had been carefully given to all phases of the instructions and charge of the court that the questions that are propounded would not have been submitted. As they have been, however, I will explain what in general was meant. Of course it is not meant that if Senator Burton was employed by the Rialto Grain and Securities Company as general counsel that that fact permitted him to render services before the department, for which he was to receive and did receive compensation. The gist of the offense charged in the case is rendering services there for compensation. That is the gist of it, rendering services for compensation. So that in answer to the first suggestion I will say it is undoubtedly an incorrect understanding of the law as well as of the plain meaning of the statements of the charge, to say that merely because the accused was employed as general counsel he had the right to render such services before the Post Office Department. * He had the right to go before the Post Office Department, as I said in substance in the charge several times, in such a way and manner as is consistent with the principles
348 of the law. He could go there and answer questions and make suggestions with regard to any matter that was pending there provided he did it in a free and independent way unaf-ected by the fact of receiving compensation. It would not seem that it is necessary to make further comments with respect to that matter at all. The relations which arise

between a lawyer and client when he is employed and is to receive compensation are such as require the attorney at all times and under all circumstances to be faithful to the client and do not permit him to render services against the client in any way or manner. It is for that reason, as I have stated in the charge that the law prohibits a senator from entering into relations by which he should receive compensation for those services. He should go before the department, if at all, as a representative of the people so that the relation between him and the office should be that of entire unreserve and fairness unaffected by the fact that he is receiving compensation for the services; so that he should be free, so that he should give information to the department, which would subserve the interests of the government and the interests of all concerned, and not be bound by obligations which necessarily inhere from the fact that he is a paid attorney to receive compensation for doing it. In other words, as I said before, the gist of the complaint is rendering services for compensation and therefore the bare fact that he should be employed and had the right to go before the Department to render services does not excuse him provided he receives compensation for those services. I think this will make it clear so far as the first part of the inquiry is concerned, that in order to excuse the Senator from anything he did before the Department in rendering services you must find he did not render those services for compensation, in accordance with the language of the charge, or that he
349 did not receive compensation for those services. If he received compensation for those services he is guilty under the law. It he went there to render services for which he did not receive compensation it was his duty to render those services honestly and to make such answers as the circumstances of the case might require but not under the sanction or under the obligation which a paid attorney is under when he goes there.

Now, the next question which was put was this: that inasmuch as the report of the St. Louis Post Office Inspectors showed there was nothing in the complaint, the Senator was not guilty. Now, when the jury propounded such a question as that to the court, they forgot all that was said during the progress of the trial and repeatedly during the charge. The court remarked that the questions as to whether there was a just complaint or not, a just complaint, pending was entirely immaterial. It is entirely immaterial, whether the complaints that were made before the department, any one or all of them, were found to be untrue. The only question is, was there anything pending before the department, was there an inquiry pending before the department, as to whether there was any

irregularity. The issue is not whether there was an irregularity, but only was there an inquiry pending in reference to an irregularity. That is all there is to that. You can see plainly that the bare fact that service was rendered before the Department in the way charged in the indictment might be the very reason why there would have been in this case the report that there was nothing in the thing which was being investigated. The very thing which is before the jury to be considered, is whether there was anything pending. It is not permitted under the law for a Senator to go before the Department when such an inquiry is made, with a view of affecting the ac-
350 tion of the Department in the slightest way as charged in the indictment. That is the point. I do not think the jury fully read the charge and all the instructions of the court and heeded them when such a question as this is suggested as the basis of difficulty at arriving at a verdict in the case.

Gentlemen, I feel as though it is proper for me to state to you here that there could not be, in my opinion, from my observation of the character and appearance of this jury or from a consideration of the attention which they gave to the trial any better jury found anywhere to pass upon the questions of fact which have arisen in this case. Another trial of this case, which would have to follow in case of failure to agree, would simply require all these proceedings to be had before some other jury, and it is doubtful whether the case can be presented as to all the facts connected with it that would give you more light, or any jury more light, than has already been given by the proceedings in this case. The trial of such a case is attended with great expense and great trouble to many witnesses and to the Department and to the Court, and another trial ought not to be required unless with faithful conscientious consideration of the facts under the law as laid down by the Court you should fail to reach a verdict. It seems to me you ought to go over the matter faithfully considering it, especially in the light of the difficulties which have been suggested here now. I gather from this letter Mr. Foreman, what I may be incorrect about, I would like to ask the foreman of the jury how you are divided. I do not want to know how many stand for conviction or how many for acquittal, but to know the number who stand one way and the number who stand another way. I would like the statement from the foreman.

351 The Foreman: Eleven to one.

The Court: The jury stand eleven to one. I gathered that from the communication. In the light of that fact I feel constrained to make a statement to you and in making it to

use the language of the Supreme Court of the United States as found in United States vs. Allen:

"Although the verdict must be the verdict of each individual "juror, and not a mere acquiescence in the conclusion of his "fellows, yet they should examine the question submitted with "candor and with a proper regard and deference to the opin-"ions of each other; that it was their duty to decide the case "if they could conscientiously do so; that they should listen, "with a disposition to be convinced, to each other's arguments; "that if much the larger number were for conviction, a dissent-"ing juror should consider whether his doubt was a reasona-"ble one which made no impression upon the minds of so many "men equally honest, equally intelligent with himself. If, upon "the other hand, the majority was for acquittal, the minority "ought to ask themselves whether they might not reasonably "doubt the correctness of a judgment which was not concurred "in by the majority."

The communication from the jury rather suggests to my mind not a failure to apprehend the law as it was laid down by the Court, but it seems to be rather a disposition to think that what was laid down by the court is not or ought not to be the law. Now, gentlemen, that kind of thought, if that is the case, cannot be tolerated in a court of justice, made up, as it is, of a court and jury. The court is responsible for the law and the jury's duty is to conform to the principles and
352 the legal propositions laid down by the court and not to question them in the least. This is unquestionably the only way in which proceedings can be conducted wherein judicial judgments are to be arrived at. This is done by the jury recognizing the obligations of the court itself to determine the law and for them to apply that law to the facts of the case.

In order to relieve any member of the jury who might think otherwise, it is entirely proper to say that the law of the case as laid down by the court is subject always to review by an appel-ate court. If this court is wrong in its charge and instructions there is opportunity of reviewing it in an appel-ate tribunal, so that whatever may be your views as to the court not being correct in the announcement of the law, you can always be assured if it is not correct in the matter that counsel for the defense in case of conviction will have full opportunity of submitting the matter to other tribunals to determine what is the true law upon the subject.

I have made these remarks to you knowing and feeling confident that your sole and only purpose is to reach a righteous conclusion in the case. I know you feel and wish to be and are honest men and I make these remarks to you with a view of en-

abling you to retire to the jury room and in the light of the explanation of the two supposed troublesome questions, and in the light of the further comment which the Court has made, to ask you to make a serious attempt to arrive at a verdict in the case.

Mr. Krum: If the Court please, on the part of the defendant, I ask to have your Honor indicate to the jury that the requests to charge asked by the defendant, which were given by the court, constitute as much a part—

353 The Court: If you will wait a moment the jury may retire.

Mr. Krum: I beg your Honor to state to the jury—

The Court: Stop a moment and then I will hear your argument. I will after the jury retire hear counsel if they have anything to say, or any exceptions they may wish to take to the charge. The court here handed the Foreman of the jury the charge and instructions heretofore referred to and directed the jury to retire for further consideration of their verdict.

Mr. Lehman: I do not believe that the requests to charge in the manner made by defendant and were given by the Court to the jury were given as they should have been, the suggestions being made by the court at the time that they were mere abstract statements which had the effect to deprive them of something of their force when they were not intended as mere abstractions and were believed by counsel to have specific reference to the case, and those instructions, as well as others, ought to be called to the attention of the jury. We must except here as earnestly as it is in our power to do against the charge of the court made now.

The Court: If you except, I will allow the exception.

Mr. Krum: What I desire to do in the presence of the jury was to ask your Honor to indicate to the jury, as it was evident the jury did not understand, that it was a fact that the request to charge which were recognized by the court, acquiesced in by the court and given by the court, were just as much a part of your Honor's charge as that which the Court read as emanating from the court itself.

The Court: I did tell the jury so on Saturday.

Mr. Krum: I submit it is apparent that they do not understand that they are just as much to be controlled by that

254 part of the instructions as any other part. That is evident from the inquiry made.

The Court: The Court has endeavored to answer the only request made by the jury, and that is all I think should be done.

Mr. Krum: We except to the last ruling of the court.

Now in order that the foregoing may be made a part of the record of this case, counsel for defendant presents this bill of exceptions and ask- that it may be signed, and made a part thereof, which is accordingly done this 6th day of April, 1904.

ELMER B. ADAMS, *Judge.*

And afterwards and during said May term 1904, of said court, the following further proceedings were had and appear of record in said cause, to-wit:

At recess.

SATURDAY, *July 23d*, 1904.

On this day received the following order from Mr. Justice Brewer which is now entered of record to-wit:

THE UNITED STATES, Plaintiff, *vs.* JOSEPH RALPH BURTON, Defendant. } 4992. Indictment for Violation of Section 1782 of the Revised Statutes of the United States.

Upon the motion of W. H. Rossington, attorney for the defendant, and upon filing a petition for a writ of error and an assignment of errors, it is ordered that a writ of error be and hereby is allowed to have reviewed in the Supreme Court of the United States, the judgment and sentence heretofore entered herein, and that the amount of bond on said writ of error be and the same is fixed at ten thousand dollars ($10,000.00).

July 9th, 1904.

DAVID J. BREWER,
Associate Justice Sup. Ct. U. S.

Which assignment of errors and petition for writ of error are respectively in the words and figures as follows, to-wit:

Assignment of Errors.

In the United States District Court for the Eastern Division of the Eastern District of Missouri.

THE UNITED STATES *vs.* JOSEPH RALPH BURTON.

Now comes the defendant, Joseph Ralph Burton, and makes his assignment of errors, respectfully showing that the court below erred in each of the following particulars:

I.

The court erred in overruling the demurrer to the indictment and to each count thereof.

II.

The court erred in refusing to allow to the defendant more than three peremptory challenges to the jury, and the number of such challenges as demanded by him.

III.

The court erred in refusing at the close of the case of the United States to instruct the jury to return a verdict of not guilty upon

each count of the indictment; and in refusing to instruct the jury to return a verdict of not guilty upon the whole indictment.

IV.

The court erred in refusing at the close of the whole case to instruct the jury to return a verdict of not guilty for the defendant upon each count of the indictment and upon the whole indictment.

V.

The court erred in the ruling made upon the testimony, as shown by the bill of exceptions, admitting in evidence against the defendant, the letter written by Bella Evans of Albany, New York, to the Post Master General at Washington, D. C., and received there October 28, 1902; and contained on page 7-*a* of the bill of exceptions.

To the offer of this letter the defendant at the time objected as incompetent, and as not showing any matter or thing pending before the Post Office Department; and because the only fact open to consideration, upon the theory of the Government, was the filing of the letter, in the department, and not the contents of the letter.

These objections were overruled by the court and the letter was admitted in evidence.

VI.

The court erred in admitting in evidence against the defendant, the letter of Mrs. K. C. Hout of Albany, New York, addressed to the Postmaster General at Washington, D. C., and received there November 1, 1902. To which letter the defendant objected upon all the grounds stated in his objections to the letter of Mrs. Bella Evans. Which objections were by the court overruled; and the letter was admitted and received in evidence.

VII.

The court erred in admitting in evidence against the defendant, the letter written by Arthur M. Allen of New Brighton, Staten island, New York, to the Postmaster General at Washington, D. C., and received by the Postmaster General on November 29th, 1902. To which letter the defendant objected on all the grounds stated in the objection to the letter by Bella Evans, and upon the further ground that there was no specification in any count of the indictment that any such thing as that constituted a part of the foundation of inquiry set on foot by the Postmaster General and because this letter was not a matter of complaint, but simply a vehicle for transmitting a letter of the Rialto Grain & Securities Company to the Post Office Department. Which objections were by the court overruled and the letter was read in evidence.

VIII.

The court erred in admitting in evidence against the defendant the letter of the Rialto Grain & Securities Company, dated October 22, 1902, addressed to Arthur M. Allen, New Brighton, Staten island, New York, and enclosed by him in his letter to the Postmaster General. The defendant objected to the admission of said letter upon all the grounds stated in the objections to the letter by Arthur M. Allen to the Postmaster General. Which objections were overruled by the court and the letter was read in evidence.

IX.

The Court erred in admitting in evidence against the defendant the booklet of the Rialto Grain & Securities Company, entitled "Golden Gain from Golden Grain", which was enclosed by the said Allen in his letter to the Postmaster General. The admission of this booklet in evidence was objected to upon all the grounds stated in the objections to the letter by the said Allen to the Postmaster General.

X.

The Court erred in admitting in evidence against the defendant, the letter of S. A. Warner of Pittsfield, Massachusetts, addressed to the Postmaster General at Washington, D. C., and received there on January 16, 1903. The defendant objected to the admission of such letter upon all the grounds stated in the objection to the letter of Arthur M. Allen to the Post master General, which objections were by the Court overruled, and the letter was read in evidence.

XI.

The Court erred in admitting in evidence against the defendant the booklet of the Rialto Grain & Securities Company entitled "Giant Oaks from Tiny Acorns Grow"; which booklet was contained in the letter sent by S. A. Warner to the Post-
358 master General. And the defendant objected to the admission of said booklet in evidence upon all the grounds stated in the objection to the letter of said S. A. Warner, Which objections were by the Court overruled and the booklet was received in evidence.

XII.

The Court erred in admitting in evidence the letter of F. R. Fravel, dated November 3, 1902, at Washington, D. C., addressed to the Postmaster General; and the defendant objected to the admission of said letter upon all the grounds stated in the objections made to the admission of the letter of said Allen to the Postmaster General; which objections were by the Court overruled, and the letter was received in evidence.

XIII.

The Court erred in admitting in evidence the letter of the Rialto Grain & Securities Company, dated October 29, 1902, and addressed to F. R. Fravel, at Washington, D. C., and enclosed by said Fravel in his letter to the Postmaster General; and the defendant objected to the admission of said letter upon

all the grounds stated in the objections to the letter of said Fravel to the Postmaster General, which objections were by the Court overruled, and the letter was read in evidence.

XIV.

The Court erred in admitting in evidence against the defendant the "Jacket" or file wrapper from the Post Office Department of the United States, identified by the witness George M. Smith, and being "Miscellaneous Case No. 13,778C", which "jacket" or file wrapper was objected to as not competent and as not showing the pendency of any matter in the department in which the United States was interested, as alleged in the indictment; which objection the Court overruled, and said "jacket" or file wrapper was received in evidence.

359 XV.

The Court erred in admitting in evidence against the defendant the letter of defendant of date November 20, 1902, written from Washington, D. C., to Thomas B. Harlan, at St. Louis, Missouri. The defendant objected to the admission of said letter upon the ground that there was no substantive evidence as to the commission of any offense by the defendant, and in the absence of such evidence, the letter as an admission on his part was not competent—the said letter being as follows:

Washington, D. C. Nov. 20, 1902.

Mr. Thomas B. Harlan,
Rialto Grain & Securities Company,
St. Louis, Mo.

Dear Sir: Your favor of November 18th, received. I called at the department this morning and find that there are two complaints lodged against your company. One by Bella Evans and the other by Mrs. K. C. Hont, both of Albany New York. These complaints were sent out from the main office here for investigation on the 7th of November, and doubtless the inspector there has called your attention to them before now. If he has not, he will do so very soon.

I should like to be advised what there is in these complaints. Without knowing anything about the merits of the same, I would advise that all complaints receive special attention by your company, and if possible satisfy the complainants, especially should this be your motto until after this Brooks matter is entirely out of the way.

I have arranged with the department to be advised in case any complaints are made against your company, and have arranged for a hearing if any hearing should become necessary. I have assured the department that it is the purpose of

360 your company to comply strictly with the law, and that it is your desire to remain at all times in perfect harmony with the department.

No action of any kind will be taken against you without my first being notified, and every opportunity for a full explanation of hearing will be had.

In return, if agreeable, you may make remittance for my first months pay.

Faithfully yours,

J. R. BURTON.

objection was by the Court overruled, and the letter was received in evidence.

XVI.

The Court erred in receiving in evidence the check drawn by H. C. Dennis, as President of the Rialto Grain & Securities Company, dated November 22, 1902, for Five Hundred Dollars, payable to J. R. Burton, together with the endorsements upon the said check; which were all objected to on the ground that they were not competent, for the reason that the issue being whether compensation was received by the defendant for services rendered in the Post Office Department, the receipt of the check in the City of Washington, D. C., established the fact that whatever offense was committed was committed in the District of Columbia, and not in the Eastern Division of the Eastern District of Missouri. But the Court overruled the objection and the check was read in evidence.

The check referred to is No. 624, drawn upon the Commonwealth Trust Company, of St. Louis, by the Rialto Grain & Securities Company, in the sum of Five Hundred Dollars, to the order of J. R. Burton, by him endorsed and also endorsed by the Riggs National Bank of Washington, D. C., and the Commercial National Bank of Chicago.

361 XVII.

The Court erred in permitting to be read in evidence a check of the Rialto Grain & Securities Company, dated Washington, D. C., December 15, 1902, to the order of J. R. Burton, in the sum of Five Hundred Dollars, together with the endorsements on the same of J. R. Burton, the Riggs National Bank of Washington, D. C., the Commercial National bank of Chicago, the Mercantile Trust Company of St. Louis, and the Clearing House stamp of the St. Louis Clearing House; which check was objected to on the ground that it was incompetent, in that if it evidenced the receipt of compensation at all by the defendant,

such compensation was shown by the check to have been received in Washington, D. C. But the objection to the admission of said check was overruled by the Court and the check read in evidence.

XVIII

The Court erred in admitting in evidence the check of the Rialto Grain & Securities Company No. 1698, dated St. Louis, January 22, 1903, drawn on the Commonwealth Trust Company of St. Louis, to the order of J. R. Burton, for the sum of $500, together with the endorsements thereon of J. R. Burton, Riggs National Bank of Washington, D. C., and the clearing house stamp of the St. Louis Clearing House, which check was objected to as incompetent, on the grounds indicated with reference to the previous checks of November 22, 1902, and December 15, 1902.

XIX.

The Court erred in admitting in evidence the check of the Rialto Grain & Securities Company No. 2083, dated St. Louis, February 16, 1903, drawn on the Commonwealth Trust Company of St. Louis, Missouri, to the order of J. R. Burton, in the sum of $500, together with the endorsements; J. R. Burton, Riggs National Bank of Washington, D. C., Commercial National Bank of Chicago, and the Clearing House Stamp of the St. Louis Clearing House; which check was objected to
362 as incompetent on the grounds relating to the previous checks. But the Court overruled the objection and the check was read in evidence.

XX.

The Court erred in admitting in evidence the telegram purporting to have been sent by J. R. Burton, the defendant, to Thomas B. Harlan, dated February 11, 1903, as follows:

> "S. N. McGowan is Indian Agent at the place named, but department had telegram from him yesterday, which indicates that yesterday he was in the territory. The Indian Commissioner will wire to day to see if McGowan is in St. Louis and will make inquiry of him why he is taking such proceedings. Message though signed by him may have been signed by his clerk. Department has great confidence in the real McGowan."

which said telegram was objected to on the ground that it is wholly irrelevant to any inquiry under the indictment, for the reasons that it showed on its face that the only inquiry was with reference to some person supposed to be connected with the Indian Department; but the Court overruled the objection and the telegram was admitted in evidence.

XXI.

The Court erred in admitting telegram from W. D. Mahaney to the defendant, dated February 11, 1903, as follows:

"Discontinue investigation. Matter settled amicably", which was objected to on the ground that it bore no relation to any matter of inquiry under the indictment, but the court overruled the objection and the telegram was read in evidence.

XXII.

The Court erred in admitting in evidence telegram from W. D. Mahaney to the defendant, dated February 25, 1903, as follows:

"Report to me today from apparently reliable source that two special inspectors have been appointed to investigate us and report to Postmaster General. Please verify and advise at once."

363 which telegram was objected to on the ground that it showed on its face that it had no relation to any matter pending in the department and was therefore incompetent. The Court overruled the objection and the telegram was read in evidence.

XXIII.

The Court erred in admitting the telegram from the defendant to W. D. Mahaney, dated Washington, D. C., February 27, 1903, as follows:

"No complaint in the department against you. Will write full particulars by to-night's mail."

which telegram was objected to on the ground that it showed on its face that it bore no relation to any matter pending in the department. But the Court overruled the objection and the telegram was read in evidence.

XXIV.

The Court erred in admitting in evidence the telegram from W. D. Mahaney to the defendant dated St. Louis, February 14, 1903, as follows:

"Thanks for letters. State Investigating Committee here asking for information. Harlan says no occasion for anxiety. All we want is unbiased investigation. Do you think you can do anything to help situation. Check mailed today."

Which telegram was objected to on the ground that the telegram itself showed that it had nothing to do with the case, and was therefore incompetent. But the Court overruled the objection and the telegram was read in evidence.

XXV.

The Court erred in admitting in evidence the letter from Thomas B. Harlan, to the defendant, dated December 2, 1902, beginning with the words:

> "My Dear Sir:—On Saturday night I wired you that indictments had been returned, bonds given etc."

and ending with:

> "Mrs. Harlan and I enjoyed our visit to Washington very much, and shall ever feel kindly for the many courtesies you extended to us",

364 which was objected to by the defendant on the ground that it was not competent, and that it did not relate to any matter pending before the Post Office Department in which the United States was interested; and did not relate to any service rendered by the defendant in such department; and did not relate to any matter or thing covered by the indictment. But the objection was overruled by the Court, and the letter read in evidence.

XXVI.

The Court erred in admitting evidence, against the objection of the defendant, the letter of the defendant to Thomas B. Harlan, dated December 9, 1902, beginning with the words:

> "There is no man by the name of J. H. Bowman who is a Post Office Inspector,"

and ending with the words:

> "These are all important questions that you must carefully consider. I will take care of things at this end of the line. Pleaase keep me constantly advised."

which was objected to on the same grounds as the letter from Harlan to the defendant December 2, 1902. The objection was overruled and the letter was read in evidence, said letter being as follows:

Washington, D. C. Dec. 9, 1902.

Mr. Thomas P. Harlan,
St. Louis, Mo.

My Dear Harlan: There is no man by the name of J. H. Bowman who is a post office inspector. This man Bowman in impersonating a post office inspector violated the statutes, and laid himself liable to punishment. The man operating in Colorado Springs was also a fraud. There has gone from this office no instructions whatever about the Rialto Company, and

365 there is nothing in this office against you at this time. The matter in St. Louis, as you know, is in the hands of Mr. Dice there. I herewith return the letter.

I would suggest that you prepare carefully the case of Dennis for early next month, and I have learned to know that you must

watch carefully that the jury is not set up on you. By the way, can you get a fair trial before Adams? These are all important questions that you must carefully consider.

I will take care of things at this end of the line.

Please keep me constantly advised.

Faithfully yours,

J. R. BURTON.

XXVII.

The Court erred in admitting the letter of Thomas B. Harlan to the defendant dated December 3, 1902, beginning with the words:

> "Monday of this week a man dropped into the office of the Rialto Grain & Securities Company, by the name of J. H. Bowman, of Allentown, Penn."

and ending with the words:

> "P. S. Bowman represented that he was connected with the Philadelphia office".

Which letter was objected to on the ground that it was merely a declaration by the writer to the defendant, and also showed on its face that it had no relation to any matter pending in the department with reference to which the defendant could render any service, but the objection was overruled and the letter was read in evidence.

XXVIII.

The Court erred in admitting a letter of date February 11, 1903, from the defendant to Thomas B. Harlan, beginning with the words:

366 "My Dear Harlan: I have your telegram telling me that things were satisfactory between you and Dice,"

and ending with the words:

> "If agreeable on receipt of this, I wish you would have my month's pay sent in so I can reach it by Monday next."

which letter was objected to on the ground that on its face it showed it did not relate to any matter which was the subject matter of the inquiry before the Court, and was not competent for that reason. But the Court overruled the objection and the letter was read in evidence, said letter being as follows:

Washington, D. C. Feb. 11, 1903.

Mr. Thomas B. Harlan,
St. Louis, Mo.

My Dear Harlan: I have your telegram telling me that things were satisfactory between you and Dice. I hope you are not letting him mislead you in any way.

I will be in St. Louis the fore part of next month, so soon as Congress adjourns, and shall aim to remain several days.

Be sure and keep me advised if there is anything to do at this end of the line before going away. I have tried to keep the department in a good humor with Major Dennis, and think I have succeeded.

If agreeable, on receipt of this, I wish you would have my month's pay [send] in, so I can reach it by Monday next.

Faithfully yours,

J. R. BURTON.

XXIX.

The Court erred at the close of the case of the Government to require it to elect upon which count of the indictment it would further proceed.

367 XXX.

The Court erred in charging the jury as follows:

"Enough has been pointed out by these provision- of the law to clearly show that Congress has made substantial provisions for the enforcement of the Postal Laws of the United States, and has imposed upon the Postmaster General, as the head of the Post Office Department, the authority under certain circumstances, to make an initial inquiry with reference to the fraudulent use of the mails".

"While this duty is being discharged and the initial inquiry is being made by the Post Office Department, with a view of ascertaining and determining what action the Postmaster shall take in a given case, that is: Whether he shall prohibit the use of the mails, and require letters to be stamped "Fraudulent", in the way and manner which I have already explained, the law prohibits any Senator, Representative, Delegate, Head of Department, or other officer or clerk in the employ of the Government, from taking any compensation whatever for services rendered or to be rendered before the department to any person in the matter of such inquiry".

XXXI.

The Court erred in giving to the jury the following as part of its charge:

"With respect to this feature of the indictment, and to the statute relating to the"interest"of the United States,in matters pending before the Post Office Department, the Court declares the law to be: That the United States within the true meaning of section 1782, was interested, both directly and indirectly, in the determination of the question, if such question was pending before the department, whether the Rialto Grain & Securities Company was so violating the law as to require the Postmaster General in the performance of his duty, under the law,

to stop its use of the mails, and to stamp its letters "Fraudulent" in the way and manner already stated and as fully set forth in the indictment.

The United States owed the highest duty to all its citizens to see to it that the law was faithfully enforced, and it was interested in the highest legal sense of the term, within the true meaning of the act of Section 1782, both directly and indirectly, in the question whether the law was so being violated by the Rialto Grain & Securities Company, as to authorize or require its executive officer, the Postmaster General, to exercise the power conferred upon him, and perform the duty imposed upon him by the law."

368 XXXII.

The Court erred in charging the jury, among other things, as follows:

"If you find from the evidence before you that the accused was, on or about the 26th day of March, 1903, a Senator of the United States, duly qualified and acting as such, and at that time, while he was so a senator, there was pending before the Post Office Department of the United States an inquiry as to whether the Rialto Grain & Securities Company was so violating the Postal laws as set forth in these three counts, with a view and to the end of enabling the Postmaster General to determine whether he should instruct the Postmaster at St. Louis to refuse delivery of mail to the Rialto Grain & Securities Company and stamp its mail, "Fraudulent", and return the same, as stated in these counts, and if while such matter was so pending before the department the accused, knowing that such matter was so pending accepted and received at St. Louis, Missouri, within this District, from the Rialto Grain and Securities Company, or any of its officers, acting for and in behalf of said company, the sum of Five Hundred Dollars, for services, of the kind set forth in the counts, as already stated by me, theretofore on any days between November 22, 1902, and March 26, 1903, rendered by him for the company, before the Department in the matter of that inquiry, then it will be your duty to find the defendant guilty as charged in the first and second counts of the indictment, otherwise to find him not guilty on these counts".

XXXIII.

The Court erred in its charge to the jury, in that part of it relating to the sixth count of the indictment, as follows:

"The sixth count of the indictment relates to a transaction different from that involved in the first three counts. This count charges that the accused on or about November 22, 1902, at St. Louis, in this District, accepted and received a certain

check of that date, for the payment of money in the sum of Five Hundred Dollars; that the check was drawn by the Rialto Grain & Securities Company upon the Commonwealth Trust Company, of St. Louis, payable to the order of the accused, and by him endorsed, and afterwards paid to him at St. Louis, Missouri, by the said Commonwealth Trust Company, for services of the kind already called to your attention, theretofore rendered by the accused to the Rialto Grain & Securities Company, in a matter then pending before the Post Office Department, in which the United States was directly interested.

This count then proceeds to set out that the matter so pending before the Post Office Department was whether the Rialto Grain & Securities Company had been violating the laws
369 of the United States as already explained, that is to say; whether it had so devised a scheme to defraud, contemplating the use of the mail service, and actually making use of the mail service in executing this scheme to defraud in violation of the provisions of section 5480, to which I have already referred, so as to require the Postmaster General in the exercise of the power conferred upon him by law, to direct the Postmaster at St. Louis, Missouri, not to deliver to the said Rialto Grain & Securities Company, any mail, but to return the same with the word "Fraudulent" stamped thereon, upon any and all letters addressed to the Rialto Grain & Securities Company, and sent through the mails to that company at St. Louis, Missouri.

The elements of the offense charged in this [court] are the same as those charged in the first and second counts. If you find from the evidence, by the measure of proof which I shall presently state, that the accused, while a Senator of the United States,[or]or about the 22nd day of November, 1902, knowingly received at St. Louis, Missouri, the proceeds of the check described in this count, from the Commonwealth Trust Company, as compensation for his services theretofore rendered to the Rialto Grain & Securities Company, of the kind and in the way and manner stated in this count, before the Post Office Department in the matter so alleged to have been pending before the department, and known by him to have been so pending when he received the money, then your verdict on this sixth count must be guilty, otherwise not guilty.

The Government claims that the compensation referred to in this count was sent to the accused by the Rialto Grain & Securities Company, in the form of a check, drawn by it on the Commonwealth Trust Company, payable to the order of the accused, by mail; that he received the check representing this compensation at Washington, in the District of Columbia, and then and there endorsed the check, deposited it to his own credit in the Riggs National Bank at Washington; that the

last mentioned bank afterwards forwarded the check by and through its correspondents to St. Louis for payment by the Commonwealth Trust Company, upon which it was drawn, and that the Riggs Bank, and its correspondents in all this matter became and were the agents of the accused for securing this money, and when the money called for by the check was finally paid at St. Louis, Missouri, by the trust company on which it was drawn, it amounted to a payment of that money to the accused at St. Louis, Missouri. This suggests an important feature of the case, for the reason that unless it be true that the accused received the money represented by and paid on this check at St. Louis, Missouri, this court would have no jurisdiction to try the case.

The Constitution of the United States confers upon the accused in every criminal case the right to be tried by an impartial jury of a state and district wherein the crime shall have been committed.

The receipt of the money is the gist of the crime, charged against the accused, and if he did not receive it in this district, in fact in St. Louis where he is charged to have received
370 it, he is not amenable to the law in this district, and cannot be convicted in this court on this sixth count. Accordingly, it becomes your duty to ascertain and find from the evidence, what were the true relations between the accused and the Washington bank, when he deposited the check in question with that bank, and what the understanding between them as to their respective rights in relation to the check and the proceeds thereof. On this question the court charges you as follows:

If it was the intent and understanding of the Washington bank and the accused at the time the latter deposited the check in question with the former, that the bank should forward the same in the usual course by and through its correspondents to St. Louis, for payment, and that in so doing, it, and its correspondents should act only as the agent of the accused for that purpose, then the final payment by the Commonwealth Trust Company, at St. Louis, of the check to the correspondents of the Washington bank, would amount in law to a payment in St. Louis as charged in the sixth count, of the amount of the check to the accused. If on the contrary it was the understanding and intent of the Washington bank and the accused at the time the latter deposited the check in question with the former, that the bank should become the purchaser of the check, and should thereafter be the absolute owner thereof, and not act as just indicated, as the agent of the accused in the collection of the check, then the payment at St. Louis by the Commonwealth Trust Company, would amount in law to a payment to the Washington bank, and not to the accused. In

the latter event no crime would have been committed by the accused in this District, by reason of the check referred to in the sixth count of this indictment.

In order to find the accused guilty on the sixth count, you must find from the evidence, by the same measure of proof as is required in all criminal cases, that the check referred to in the sixth count, was deposited by the accused in the Washington Bank, for collection, and that the bank was to act in collecting the same, as the agent of the accused, and not as the owner of the check in question.

In determining this issue, you are at liberty to and should consider all the evidence adduced; the actual transaction as it occurred at the Riggs' bank, where the money was deposited, the check itself and all its endorsements, the rights and privileges which were immediately accorded the accused upon making the deposit, the actual conduct and purpose of the Riggs' bank, in forwarding the check to St. Louis for payment, the customary conduct and usage of that bank, and all banks in Washington at the time so far as shown by the proof. And if from all these facts and all other facts disclosed by the proof, you find that the check in question was in fact deposited by the accused, with the intent and knowledge on his part, as well as on the part of the bank itself, that it should be forwarded to St. Louis for collection for account of the accused, the bank and its correspondents acting as agents for the accused to make such collection, you should find that when
371 the same was actually paid to the last endorser on the check at St. Louis, by the trust company upon which it was drawn, it was in contemplation [If] law, paid to the accused himself.

If on the contrary you find from the evidence, that the accused and the Riggs' bank at the time of the deposit of the check in question, understood and intended that the bank should become the purchaser of the check and be its absolute owner, then the subsequent forwarding of it to St. Louis for payment was the act of the bank itself, and the final payment of the check by the trust company at St. Louis, was a payment not to the accused, but to the bank, and if such is the fact your verdict on the sixth count must be not guilty".

XXXIV.

The court erred in its charge with respect to the seventh, eighth and ninth counts given, as follows:

"The seventh, eighth and ninth counts of the indictment are similar in all respects to the sixth count, with the exception that in the seventh count the accused is charged with having received a check and the proceeds thereof, dated December 15th, 1902.

And in the eighth count with having received a check and the proceeds thereof, dated January 22, 1903.

And in the ninth count with having received a check and the proceeds thereof, dated February 16, 1903.

The issues with respect to those counts are the same as the issue made by the sixth count with [respecc] to the check therein involved, and the facts to be found by you in determining your verdict on these counts are the same as already stated in discussing the sixth count, except only as to the dates when the compensation is alleged to have been received by the accused, and the principles of law governing your action on these counts as already announced in discussing the sixth count are applicable here, and do not require further statement."

XXXV.

The Court erred in refusing the following instructions asked to be given by the defendant, to-wit:

"(7) The evidence of what was done by the defendant in the matters of McGowan, Bowman and Shove, cannot be considered by you as supporting any charge of the indictment."

XXXVI.

The court erred in refusing the following instructions asked to be given by the defendant, to-wit:

"(10) If the checks of the Rialto Grain and Securities
372 Company, described in the indictment, were sent to the defendant and received by him in the City of Washington, D. C., and were by him deposited in the Riggs National Bank in Washington, and the bank gave him credit for the amounts of such checks as the same were deposited respectively, and the defendant had the right at once to check against the same and to draw out such money from the bank, and the bank sent the checks to St. Louis, and presented them for payment and they were paid, then the jury are instructed that the checks and the money thereon were received by the defendant in the City of Washington.

XXXVII.

The Court erred in refusing the following instructions asked to be given by the defendant, to-wit:

"(11) The jury are instructed that, after the defendant endorsed the checks in question to the Riggs National Bank of Washington, D. C. and had received credit in his account with the bank for the amount of such checks, the checks became the property of the bank and the bank had the right to do with the checks whatsoever it would, and it was under no obligation to account to the defendant for said checks or their proceeds."

XXXIX.

The court erred in directing the jury, on the 28th, of March, 1904, and in charging the jury in the following words:

"Gentlmen, I feel as though it is proper for me to state to you here that there could not be, in my opinion, from my observation of the character and appearance of this jury or from a [consideration] the attention which they gave to the trial, any better jury found anywhere to pass upon the questions of fact which have arisen in this case. Another trial of this case, which would have to follow in case of failure to agree, would simply require all these proceedings to be had before some other jury, and it is doubtful whether the case can be [be] presented as to all the facts connected with it that would give you more light, or any jury more light, than has already been given by the proceedings in this case. The trial of such a case is attended with great expense and great trouble to many witnesses and to the Department and to the court, and another trial ought not to be required unless with faithful, conscientious consideration of the facts under the law as laid down by the court you should fail to reach a verdict. It seems to me you ought to go over the matter faithfully considering it, especially in the light of the difficulties which have been suggested here now. I gather from this letter, Mr. Foreman, what I may be incorrect about; I would like to ask the Foreman of the jury, how you are divided? I do not want to know how many stand for conviction or how many stand for acquittal, but to know the number who
373 stand one way and the number who stand another way. I would like the statement from the foreman.

The Foreman: Eleven to one.

The Court: The jury stand 11 to 1. I gathered that from the communication. In the light of that fact, I feel constrained to make a statement to you, and in making it, to use the language of the Supreme Court, as found in United States vs. Allen:

'Although the verdict must be the verdict of each individual juror, and not a mere acquiescence in the conclusion of his fellows, yet they should examine the question submitted with candor, and with a proper regard and deference to the opinions of each other; that it was their duty to decide the case, if they could conscientiously do so; that they should listen, with a disposition to be convinced, to each other's arguments; that, if much the larger number were for conviction, a dissenting juror should consider whether his doubt was a reasonable one, which made no impression upon the minds of so many men, equally honest, equally intelligent with himself. If, upon the other hand, the majority was for acquittal, the minority ought

to ask themselves whether they might not reasonably doubt the correctness of a judgment which was not concurred in by the majority.'

The communication from the jury rather suggests to my mind, not a failure to apprehend the law as it was laid down by the Court, but it seems to be rather a disposition to think that what was laid down by the Court is not or ought not to be the law. Now, gentlemen, that kind of thought, if that is the case, cannot be tolerated in a court of justice, made up, as it is, of a court and jury. The Court is responsible for the law, and the jury's duty is to conform to the principles and the legal propositions laid down by the Court and not to question them in the least. That is unquestionably the only way in which proceedings can be conducted wherein judicial judgments are to be arrived at. This is done by the jury recognizing the obligations of the Court itself to determine the law and for them to apply that law to the facts of the case.

In order to relieve any member of the jury who might think otherwise, it is entirely proper to say that the law of the case as laid down by the Court is subject always to review by an appellate court. If this court is wrong in its charge and instructions there is opportunity of reviewing it in an appellate tribunal, so that whatever may be your views as to the court, not being correct in the announcement of the law, you can always be assured if it is not correct in the matter that counsel for the defense in case of conviction will have full opportunity of submitting the matter to other tribunals to determine what is the true law upon the subject.

I have made these remarks to you, knowing and feeling confidant, that your sole and only purpose is to reach a righteous conclusion in the case. I know you feel and wish to be, and are honest men, and I make these remarks to you with a view of enabling you to retire to the jury-room and in the
374 light of the explanation of the two supposed troublesome questions, and in the light of the further comment which the Court has made, to ask you to make a serious attempt to arrive at a verdict in the case."

XI.

The Court erred in directing the jury on the 28th, of March, 1904, and in charging the jury in the following words:

"The Court: I have received from the foreman of the jury this communication with the request that I make further explanation if deemed proper. The communication is:

'A juror claims that as Senator Burton was employed by the Rialto Grain & Securities Company as General Counsel such facts did not prohibit him from rendering such services before the Post Office Department. The juror's view, he states, is

obtained from page 11, last paragraph, and page 12, of Judge Adams' instructions in third paragraph. Said juror while believing that Senator Burton did at the instance of the Rialto Grain & Securities Company visit the Post Office Department at Washington, and perform the services as shown by the evidence, yet that as the report of the St. Louis Post Office Inspector showed that there was nothing in the complaint, the Senator was not guilty of any wrong doing.'

I think, gentlemen, that the communication made to the court shows a failure to apprehend the charge of the court and the instructions of the court in respect to the questions which are submitted by this communication. The Court in the charge made this statement.

'To permit a Senator of the United States, whose influence, by reason of the high position he holds, is naturally persuasive and weighty with executive officers, to take compensation from persons for services rendered such persons before an executive department, would, it was thought, create a duty in favor of such persons arising from the implied obligation of fidelity to the client from whom he should accept a fee, inconsistent with those relations of ready confidence and entire unreserve which ought to exist between the legislative and executive departments of the government in the promotion of the public weal and in the enforcement of the laws of the land."

The Court also said in the charge, paragraph 2, of page 12, as follows:

'Notwithstanding the fact that the accused was a Senator of the United States he had the legal right, so far as this case is concerned, to practice his profession in any and all of its phases, and to receive compensation therefor in any way and manner, and on any terms as to compensation or otherwise deemed by him best, except that he could not receive compensation for services rendered before the Post Office Department, in any matter pending there in which the United States was interested, as already explained.'

In the first paragraph on page 15 the Court said:

'You are the sole judges of the credibility of the witnesses, who have given evidence in this case, and the weight to be attached to their testimony, but as to the principles of law governing the case, it becomes your duty according to the division of responsibility, which the law has made between the Court and the jury, to acknowledge my supremacy, and to take every expression or conclusion of law, which I have announced in this charge, as your controlling guide.'

In the light of this I will now read the two clauses which the foreman reports that there is a construction put upon justifying the suggestion made in the communication. One is, as said, the last paragraph of page 11 and reads as follows:

'As you have observed during the progress of the trial one of the sharp issues of fact for you to determine is reaching a verdict on the several counts is: whether the services rendered by the accused for which he received compensation from the Rialto Grain & Securities Company, were rendered to that Company, before the Post Office Department, or whether they were general professional services rendered that Company, by way of advice, counsel or otherwise, in other matters not before the Post Office Department.'

The third paragraph on page 12 to which attention is called, reads as follows:

'Notwithstanding the fact that the accused was a Senator of the United States he had the legal right, so far as this case is concerned, to practice his profession in any and all of its phases, and to receive compensation therefor in any way and manner and on any terms as to compensation or otherwise deemed by him best, except that he could not receive compensation for services rendered before the Post Office Department in any matter pending therein which the United States was interested as already explained.'

It would seem that if attention had been carefully given to all phases of the instructions and the charge of the Court that the questions that are propounded would not have been submitted. As they have been, however, I will explain what in general was meant. Of course it is not meant that if Senator Burton was employed by the Rialto Grain & Securities Company as general counsel that that fact permitted him to render services before the department, for which he was to receive and did receive compensation. The gist of the offense charged in the case is rendering services there for compensation. That is the gist of it, rendering services for compensation. So that in answer to the first suggestion I will say it is undoubtedly
376 an incorrect understanding of the law as well as of the plain meaning of the statements of the charge, to say that merely because the accused was employed as general counsel he had the right to render such service before the Post Office Department. He had the right to go before the Post Office Department, as I said in substance in the charge several times, in such a way and manner as is consistent with the principles of the law. He could go there and answer questions and make suggestions with regard to any matter that was pending there provided he did it in a free and independent way unaffected by the fact of receiving compensation. It would not seem that it is necessary to make further comments with respect to that matter at all. The relations which arise between a lawyer and client when he is employed and is to receive compensation are such as require the attorney at all times and under all circum-

stances to be faithful to the client, and do not permit him to render services against the client in any way or manner. It is for that reason, as I have stated in the charge, that the law prohibits a Senator from entering into relations by which he should receive compensation for these services. He should go before the department, if at all, as a representative of the people so that the relation between him and the office should be that of entire unreserve and fairness unaffected by the fact that he is receiving compensation for the services; so that he should be free, so that he should give information to the department, which would subserve the interests of the government and the interests of all concerned, and not be bound by obligations which necessarily inhere from the fact that he is a paid attorney to receive compensation for doing it. In other words, as I said before, the gist of the complaint is rendering services for compensation, and therefore the bare fact that he should be employed and had the right to go before the Department to render services does not excuse him provided he receives compensation for those services. I think this will make it clear so far as the first part of the inquiry is concerned, that in order to excuse the Senator from anything he did before the Department in rendering services, you must find he did not render those services for compensation, in accordance with the language of the charge, or that he did not receive compensation for those services. If he received comepnsation for those services he is guilty under the law. If he went there to render services for which he did not receive compensation, it was his duty to render those services honestly and to make such answers as the circumstances of the case might require, but not under the sanction or under the obligation which a paid attorney is under when he goes there.

Now, the next question which was put was this: That inasmuch as the report of the St. Louis Post Office Inspectors showed there was nothing in the complaint, the Senator was not guilty. Now, when the jury propounded such a question as that to the Court, they forgot all that was said during the progress of the trial and repeatedly during the charge. The
377 Court remarked that the questions as to whether there was a just complaint or not, a just complaint, pending, was entirely immaterial. It is entirely immaterial whether the complaints that were made before the department, any one or all of them, were found to be untrue. The only question is, was there anything pending before the department, was there an inquiry pending before the department, as to whether there was any irregularity. The issue is not whether there was an irregularity, but only was there an inquiry pending in reference to an irregularity. That is all there is to that. You can see plainly

that the bare fact that service was rendered before the Department in the way charged in the indictment might be the very reason why there would have been in this case the report that there was nothing in the thing which was being investigated. The very thing which is before the jury to be considered, is whether there was anything pending. It is not permitted under the law for a Senator to go before the department when such an inquiry is made, with a view of affecting the action of the Department in the slightest way as charged in the indictment. That is the point. I do not [thing] the jury fully read the charge and all the instructions of the Court and heeded them when such a question as this is suggested as the basis of a difficulty at arriving at a verdict in the case.

Gentlemen, I feel as though it is proper for me to state to you here that there could not be, in my opinion, from my observation of the character and appearance of this jury or from a consideration of the attention which they gave to the trial, any better jury found anywhere to pass upon the questions of fact which have arisen in this case. Another trial of this case, which would have to follow in case of failure to agree, would simply require all these proceedings to be had before some other jury, and it is doubtful whether the case can be presented as to all the facts connected with it that would give you more light, or any jury more light, than has already been given by the proceedings in this case. The trial of such a case is attended with great expense and great trouble to many witnesses and to the Department and to the Court, and another trial ought not to be required unless with faithful conscientious consideration of the facts under the law as laid down by the Court you should fail to reach a verdict. It seems to me you ought to go over the matter faithfully considering it especially in the light of the difficulties which have been suggested here now. I gather from this letter, Mr. Foreman, what I may be incorrect about; I would like to ask the foreman of the jury how you are divided. I do not want to know how many stand for conviction or how many stand for acquittal, but to know the number who stand one way and the number who stand another way. I would like the statement from the foreman.

The Foreman: Eleven to One.

The Court: The jury stand eleven to one. I gathered that from the communication. In the light of that fact I feel constrained to make a statement to you and in making it to
378 use the language of the Supreme Court of the United States as found in United States vs. Allen:

"Although the verdict must be the verdict of each individual juror, and not a mere acquiescence in the conclusion of his

fellows, yet they should examine the question submitted with candor and with proper regard and deference to the opinions of each other; that it was their duty to decide the case if they could conscientiously do so; that they should listen, with a disposition to be convinced, to each other's arguments; that, if much the larger number were for conviction, a dissenting juror should consider whether his doubt was a reasonable one which made no impression upon the minds of so many men equally honest, equally intelligent with himself. If, upon the other hand, the majority was for acquittal, the minority ought to ask themselves whether they might not reasonably doubt the correctness of a judgment which was not concurred in by the majority.'

The communication from the jury rather suggests to my mind not a failure to apprehend the law as it was laid down by the Court, but it seems to be rather a disposition to think that what was laid down by the Court, is not or ought not to be the law. Now, gentlemen, that kind of thought, if that is the case, cannot be tolerated in a court of justice, made up, as it is, of a court and jury. The Court is responsible for the law, and the jury's duty is to conform to the principles and the legal propositions laid down by the Court and not to question them in the least. That is unquestionably the only way in which proceedings can be conducted wherein judicial judgments are to be arrived at. This is done by the jury recognizing the obligations of the court itself to determine the law and for them to apply that law to the facts of the case.

In order to relieve any member of the jury who might think otherwise, it is entirely proper to say that the law of the case as laid down by the Court is subject always to review by an appellate court. If this court is wrong in its charge and instructions, there is opportunity of reviewing it in an appellate tribunal, so that whatever may be your views as to the Court not being correct in the announcement of the law, you can always be assured if it is not correct in the matter that counsel for the defense in case of conviction will have full opportunity of submitting the matter to other tribunals to determine what is the true law upon the subject.

I have made these remarks to you, knowing and feeling confidant that your sole and only purpose is to reach a righteous conclusion in this case. I know you feel and wish to be and are honest men, and I make these remarks to you with a view of enabling you to retire to the jury room and in the light of the explanation of the two supposed troublesome questions, and in the light of the further comment which the Court has made, to ask you to make a serious attempt to arrive at a verdict in the case."

XLI.

The court erred in refusing to indicate to the jury, upon the request of the defendant, that the instructions given at the instance of the defendant, constituted as much a part of the charge of the court as that portion to which the court referred as its charge.

XLII.

The court erred in overruling the defendant's motion for a new trial.

XLIII.

The court erred in overruling the defendant's motion in arrest of judgment.

XLIV.

The court erred in rendering judgment and sentence herein against the defendant.

And the defendant prays that the said judgment and sentence herein be reversed, set aside and held for naught.

FRED W. LEHMANN,
JNO. F. DILLON,
W. H. ROSSINGTON,
Attorneys for Defendant.

(*Petition for Writ of Error.*)

UNITED STATES OF AMERICA:

STATE OF MISSOURI, } ss:
City of St. Louis, }

United States District Court, Eastern Division of the Eastern District of Missouri.

THE UNITED STATES OF AMERICA } Petition for a Writ of Error
vs. } by the Defendant.
JOSEPH RALPH BURTON. }

Joseph Ralph Burton, defendant in the above entitled cause, feeling himself aggrieved by the verdict of the jury and the judgment entered on the 6th day of April, 1904, comes now by his attorneys and shows to the court that in this cause by the said verdict and judgment and sentence he was convicted of an infamous crime, and also shows that the case involves the construction or application, or both, of the Constitution of the United States, and also shows that the case involves the constitutionality of a law of the United States; and now hereby petitions the said court for an order allowing the defendant to prosecute a writ of error to the honorable the Supreme Court of the United States under and according to the laws of the United States in that behalf made and provided, and also that an order be made fixing the amount of security which the defendant shall give and furnish upon such writ of error, and that upon the giving of such security all further proceedings in this court be suspended and stayed until the determination of the said writ of error by the Supreme Court of the United States.

Wherefore this defendant prays for the allowance of a writ of error and for an order fixing the amount of said bond and for such further orders and process as may cause the errors complained of to be corrected by the said Supreme Court of the United States, and said verdict, judgment and sentence to be set aside. And your petitioner will ever pray.

JOHN F. DILLON,
W. A. ROSSINGTON,
F. W. LEHMAN,
Attorneys for Defendant.

And on said July 23, 1904, and during said May term, 1904, of said court the following further proceedings were had and appear of record in said cause, to-wit:

THE UNITED STATES, Plaintiff, vs. JOSEPH RALPH BURTON, Defendant.	4992. Indictment for Violation of Section 1782 of the Revised Statutes of the United States.

Now at this day there is filed herein a supersedeas bond dated July 9th, 1904, in the penal sum of ten thousand dollars, ($10,000.00) approved by Mr. Justice Brewer, and a citation citing and admonishing said plaintiff to be and appear before the Supreme Court of the United States thirty days from July 9th, 1904, and signed by Mr. Justice Brewer is also this day filed herein.

Which said bond is in words and figures following, to-wit:

Bond.

Know all men by these presents, that we, Joseph Ralph Burton, as principal, and George W. Davis, Ernest H. Kastor, and Richard C. Kerens, as sureties, are held and firmly bound unto the United States of America in the full and just sum of ten thousand dollars, to be paid to the United States of America, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 2nd. day of July, in the year of our Lord, one thousand nine hundred and four.

Whereas, lately, at the November term, A. D., 1903, of the district court of the United States for the eastern division of the eastern district of Missouri, in a suit pending in said court between the United States of America and Joseph Ralph Burton, defendant, a judgment and sentence was rendered against the said Joseph Ralph Burton, and the said Joseph Ralph Burton has obtained a writ of error from the Supreme Court of the United States to reverse the judgment and sentence in the aforesaid suit, and a citation directed to the said United States of America, citing and admonishing the United States of America to be and appear in the Supreme Court of the United States, at the city of Washington, D. C., sixty days from and after the date of said citation, which citation has been duly served.

Now, the condition of the above obligation is such, that if the said Joseph Ralph Burton shall appear, either in person or by attorney, in the Supreme Court of the United States, on such day or days as may be appointed for the hearing of said cause in said court, and prosecute his said writ of error, and shall abide by and obey all orders made by the United States Supreme Court, and shall surrender himself in execution of the judgment and sentence appealed from as said court may direct, if the judgment and sentence against him shall be affirmed; and if he shall appear for trial in the district court of the United States for the eastern division of the eastern district of Missouri on such day or days as may be appointed for a retrial by said district court, and abide by and obey all orders made by said court provided the judgment and sentence against him shall be reversed by the Supreme Court of the United States, then the above obligation to be void, otherwise to remain in full force, virtue and effect.

JOSEPH RALPH BURTON. [SEAL.]
GEORGE W. DAVIS. [SEAL.]
ERNEST H. KASTOR. [SEAL.]
RICHARD C. KERENS. [SEAL.]

Witness as to all names:
W. H. ROSSINGTON.

Approved:
DAVID J. BREWER,
Associate Justice Sup. Ct. U. S.

July 9th, 1904.

On June 2nd, 1904, a stipulation was filed in said cause, which is in words and figures as follows, to-wit:

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

United States
v.
Joseph R. Burton.

It is agreed, that on March 28, 1904, defendant filed the following motion for a new trial, to-wit:

"In the District Court of the United States, East Dist. Mo.

The United States
v.
Joseph R. Burton.

The defendant moves the Court to grant him a new trial, for the following reasons:

The Court admitted incompetent evidence offered by the United States, in letters from the defendant to Harlan and in letter from Harlan to the defendant; in letters and telegrams to and from the defendant and others; in testimony covering checks received by the defendant in Washington, D. C.; in testimony as to visits by the defendant to offices in the Post Office Building in Washington and conversations thereupon in testimony as to conferences between defendant and others outside of the offices of the Post Office Department; in testimony touching the custom of banks in regard to checks; in testimony covering complaints lodged with the Post Office Department in regard to the Rialto Grain and Securities Company; in testimony as to inquiries made by the Defendant about books of the Brooks Brokerage Company and correspondence relating thereto.

The Court gave improper and erroneous directions to the jury upon questions of law in the case.

The Court refused the demurrers to the evidence offered by the defendant.

The Court refused to give proper instructions asked by the defendant.

The Court erred in commenting upon the reported fact that the jury were divided, in asking how they stood, and then specially directing them in that regard

The Court erred in its charge to the Jury based upon an inquiry addressed to the Court by the foreman of the jury.

The Court erred in refusing to indicate to the jury, that the instructions given at the instance of the defendant were to be considered as well as the general charge.

The verdict is against the evidence and the weight of the evidence.

The verdict is the result of mere passion and prejudice against the defendant on the part of the jury.

FRED W. LEHMAN,
CHESTER H. KRUM,
For Defendant.

382b That on March 29, 1904, defendant filed the following motion in arrest, to-wit:

In the District Court of the United States, Eastern Division
Eastern District of Missouri.

The United States of America
vs.
Joseph Ralph Burton.

The defendant moves the Court to arrest the judgment in the above entitled case, for the following reasons:

First: Neither of the counts of the indictment states facts sufficient to constitute an offense against the laws of the United States.

Secondly: Neither of the counts states facts sufficient to show either the pendency in the Post Office Department of the United States of a matter or thing, or any interest directly or indirectly in such matter or thing on the part of the United States.

Thirdly: The Court was without jurisdiction to try and determine the said case at the time when it was tried and determined, and all proceedings had therein are void and should be for naught held.

Fourthly: The privilege of freedom from arrest granted to the defendant during the session of the Senate of the United States is not merely a personal privilege, but is a prohibition against arrest or judicial proceedings against a member of the Senate of the United States during a session of the Senate, which cannot be waived by such member.

FRED W. LEHMAN,
CHESTER H. KRUM,
Attorneys for Defendant.

That the Court overruled the foregoing motions April 6, 1904, and defendant excepted.

DAVID P. DYER,
For United States.

CHESTER H. KRUM,
For Defendant.

383 Opinion on Demurrer to Indictment.

In the District Court of the United States for the Eastern Division of the Eastern District of Missouri.

The United States
vs.
Joseph Ralph Burton.

On Demurrer to Indictment.

Adams, Judge:

The offense charged in the indictment is denounced by Section 1782 of the Revised Statutes of the United States, and stripped of verbiage is: that the accused, a senator of the United States, received a pecuniary compensation from the Rialto Grain and Securities Company for services rendered by him to that company in a matter pending before the Post-Office Department. The matter alleged to have been so pending is: whether the Securities Company had so violated Section 5480 R. S., by divising a scheme to defraud, contemplating the use of the United States Mails, as to require the Postmaster General to forbid the use of the mails to the Securities Company, and to direct the Postmaster at St. Louis to return all letters coming to that post-office, addressed to the Securities Company, to the writers thereof with the word "fraudulent" stamped thereon, and to make an order to that effect.

A demurrer has been interposed to the indictment on the grounds:

First: That the Postmaster General had no authority on the facts stated in the indictment to make the order forbidding the use of the mails to the Securities Company.

Second: That no matter or thing was pending before the Post-Office Department in which the United States was interested within the purview of Section 1782. These will be considered in their order.

384 Section 3929 of the Revised Statutes provides in effect: that the Postmaster General, may upon evidence satisfactory to him, that any person is engaged in conducting any scheme or device for obtaining money through the mails by means of false or fraudulent pretenses, instruct postmasters at any post-office at which letters may arrive directed to any such person, to return all such letters to the postmasters at the offices at which they were originally mailed with the word "Fraudulent" plainly written or stamped upon the outside of such letters.

The indictment alleges that the matter pending before the Post-Office Department was: whether the Securities Company had violated the provisions of Section 5480 R. S., which denounces the use of the mails for executing schemes to defraud as a crime, when according to the contention of counsel for the accused it should have alleged that it was then so violating those provisions.

The argument is: that the Postmaster General had no jurisdiction to issue the so-called fraud order, or stop the mail of the Securities Company, except on evidence satisfactory to him that the company was then conducting a fraudulent scheme, and that the averment that the company had so conducted such a scheme is not enough. I am not impressed with the importance of this criticism.

Section 5480 R. S., to which section 3929 R. S. manifestly refers, so far as the fraudulent scheme for obtaining money through the mails there referred to is concerned, contemplates an executed transaction.

No indictment would lie unless the offense had been completed by the actual deposit of some letter in furtherance of the fraudulent scheme in the post-office. Such offense actually committed once and, a fortiori, many times, would be strong evidence that the offender was actually engaged in conducting business fraudulently within the meaning of Section 3929.

385 But waiving this view, it must be observed that the gist of the offense charged against the accused is: that he unlawfully received compensation for services rendered by him before the post-office department in relation to a matter in which the United States was interested.

The indictment accurately charges all the statutory elements of the offense, namely; that the accused rendered services before the department; received compensation therefor, (naming the party to whom the services were rendered, and from whom the compensation was received) the amount which he received; the time when he received it, and that the United States was interested in the matter in relation to which he rendered the services.

For the purpose of informing the accused as to the nature and character of the matter in question, the pleader undertook to state what was pending before the post-office department in relation to which the accused rendered the services. The sole purpose of this statement was to fairly and reasonably inform the accused of the general nature of the matter; and for this purpose, as was conceded in argument, no such

particularity of averment is required, as would have been necessary if a criminal charge was being laid against the Securities Company. It is entirely sufficient if the averments fairly serve the purpose of informing the accused of the general nature of the matter which was pending before the department, and in regard to which he is charged with having rendered service.

But a conclusive answer to this first criticism is: that the indictment after alleging that the inquiry before the department was: whether the Securities Company had violated Section 5480 R. S., charges that the matter so pending before the department was "to the end and for the purpose of enabling the Postmaster General of the United States, in pursuance
386 of the authority vested in him by law to ascertain, find and determine from evidence satisfactory to him, whether he should order and direct the postmaster at St. Louis not to deliver to the said Rialto Grain & Securities Company, but to return with the word "Fraudulent" plainly written or stamped upon the outside, any and all letters addressed to said Rialto Grain & Securities Company, and sent to or through the post-office at St. Louis, Missouri, by means of the post-office establishment of the United States".

All other averments in my opinion might be treated as surplusage. Those just quoted would in and of themselves sufficiently apprise the accused of the matter pending before the department. It cannot be successfully claimed, I think, that the Postmaster General did not have jurisdiction and ample authority under Section 3929, R. S. as amended, to forbid the use of the mails by the Securities Company, and to issue the so-called "fraud order", under some circumstances. If he had such jurisdiction in the abstract, that is: if he could have exercised the jurisdiction of forbidding the use of the mails to the Securities Company under any circumstances, such was jurisdiction enough for the purposes of this case.

I know of no reasons why in this incidental feature of the indictment, the pleader should be called upon to state accurately all the facts necessary to give jurisdiction to the Postmaster General. The law (Section 3929) conferred the jurisdiction just referred to upon the Postmaster General, and of this law, the courts take full cognizance. I think the pleader might properly enough have omitted all else in the indictment on the subject now discussed, except that portion above quoted, and the necessary jurisdiction in the Postmaster General would have sufficiently appeared. Certainly no injury can befall the accused by reason of the detail statement of evidential facts. This tends to apprise him more fully than the law requires, of the nature of the matter pending before the department.

387 The next question is whether the United States was interested in the matter so pending before the post-office department within the meaning of Section 1782, supra.

A question preliminary to this is: what kind of a "matter" or "thing" is within the comprehension of the section. The prohibition of the statute is against rendering any service to any person "in relation to any proceeding, contract, claim, controversy, charge, accusation, arrest or other matter or thing in which the United States is a party or directly or indirectly interested, before any department, court-martial, bureau, officer, or any civil, military or naval commissioner whatever".

It is first contended by counsel for the accused that the words "other matter [of] thing" found in the enumeration, cannot enlarge the particular specification which precedes it. The rule "ejusdem generis" is invoked, to the effect: that when such general words follow particularly specified subjects in a statute, the general words must be construed as not enlarging the particulars enumerated, and as not creating any new subject differing from those specified. This generally speaking, is a well recognized rule of construction, but clearly does not go to the extent of altogether nullifying the general words. Its true meaning is that the general words must be construed as comprehending and embracing other subjects like those specified, that is: of the same general character, or so related to them as to be within the legislative intention.

Effect must be given to all words of a statute if possible Congress therefore must be held to have intended something by the use of these general words. Now what is it?

Congress industriously specified the several subjects just mentioned, obviously intending to cover any and all matters or things that might be the subject of inquiry before a department in which the United States should be interested.

388 The statute in the language employed, embraces the actual "proceeding", "controversy", "charge", "accusation" or "arrest" in which the United States might in any legal technical sense be a party. It then adds the words "contract", and "claim", manifestly embracing the matters in which the United States might be interested pecuniarily. Congress then doubtless realizing that in the several executive departments and bureaus of the government, divers other matters might properly and necessarily be the subject of consideration and investigation, made use of the other general words, "or other matter or thing". I think these words within the true meaning of the rule of construction known as "ejusdem generis" were intended to cover kindred subjects, like preliminary ex-

aminations and inquiries necessary to enable the Government acting through one of its departments, bureaus, officers etc., to determine whether a proceeding should be instituted, a charge or accusation made, or an arrest ordered, or whether a contract or claim should be made.

All of these things are obviously important in the conduct of the great executive departments and bureaus of the government, and it is with reference to these executive departments and bureaus that the provisions in question appear. The chief functions of these departments and bureaus are to investigate, determine and act, and not to sit as courts in the matter of actual arrests, accusations, or controversies in the legal sense.

I think in the light of the foregoing considerations that the general words "or other matter or thing" fairly embrace the inquiry or investigation alleged in the indictment to have been pending in the Post-Office Department. This conclusion it seems to me is eminently correct, so far as the particular charge laid in the present indictment goes.

The Postmaster General is alleged to have been en-
389 gaged in making an inquiry as to whether the Securities Company should be deprived of the use of the mails. This inquiry was quasi judicial in its character. It could be followed by an order depriving the Securities Company of exercising the valuable privilege of using the mails. Such an inquiry involved many of the essential characteristics of a "proceeding" or "accusation", at least, in my opinion, enough to make it so akin to, or so like the "proceeding", or accusation" of the statute as to be fairly comprehended by the general words under consideration.

It is next argued that even if the inquiry before the Postmaster General in question was within the contemplation of the statute, the United States is not directly or indirectly interested in it, and therefore that the accused is guilty of no offense within the meaning of section 1782 R. S., even if he did receive compensation for services rendered to the Securities Company before the department in the matter under investigation.

It is true as argued by counsel that the statute in question carries a limitation. The matter or thing involved must be one "in which the United States is a party, or directly or indirectly interested." It is not averred in the indictment that the United States was a party to the proceeding in question, but that it was directly, and in the second count, indirectly, interested. Counsel have called attention to several cases in the United States Supreme Court, and in State Courts of last

resort in which the words "interest" and "interested" are found in statutes relating to disqualification of parties, witnesses and judges in legal proceedings, that is: suits pending in the courts, and to cases of quo warranto involving the right of appeal in cases in which the state is interested as a party or otherwise. In these cases it has been held generally that the "interest" referred to must be a pecuniary or property interest, and counsel for the accused contend that the interest of the United States contemplated by Section 1782 is
390 only that kind of an interest, namely; a pecuniary or property interest, and that the matter or thing pending before the department within the purview of that section, must be one in the determination of which the United States may gain or lose something of value.

These cases involve statutes relating generally to suits or actions at law wherein property, or property rights are involved. The witnesses and judges whose "interest" in the matter was made a disqualification, were such as had no other duty to discharge in those cases, except so far as the witnesses were concerned, to testify, and so far as the judges were concerned to render judgments and pass upon rights of property, or other valuable rights, which afforded the subject of the particular litigation in hand. The legislators which enacted the statutes construed in those cases, obviously had primarily in view the narrow sphere of the subject of litigation, which of course was property,—the vindication of individual right, or the redress of individual wrong. The legislative vision need not and did not extend beyond the effect of the pecuniary interest of the witnesses or judges in the individual cases. Is this the measure of duty or obligation of the United States in the matter of inquiries or investigations pending before its executive departments or bureaus? I think not.

The United States in effect agreed with the states, and with the people of the states by the adoption of the Constitution and the acceptance of the powers delegated to it by the states, that it would among many other grave responsibilities represented by delegated powers establish post-offices and post roads, and it agreed that it would pass any and all laws requisite and necessary to make that grant of power effectual. Pursuant thereto it, by its congress, has passed many laws regulating the mail service; prohibiting its use for fraudulent purposes and punishing offenders.

391 The Constitution and the laws of the United States made pursuant thereto, is the supreme law of the land. The President is the chief executive officer, and the Constitution declares in terms: that he "shall take care that the laws

be faithfully executed", and requires that he shall take a solemn oath to faithfully discharge this obligation. Numerous executive departments, which are but an arm of the President for the performance of his executive duty, have been organized to aid him in the discharge of the same.

It follows from these considerations that in the performance of this duty the executive department is but fulfilling the high obligation imposed upon it by law. This is a duty which the government owes, not as a moral obligation resting alike upon all the citizens of the Republic, but is a duty imposed upon its executive officers and departments by law, and one which under the highest and most solemn obligations they must perform.

Madison in one of his famous papers on the Constitution, says: "The Federal and State Governments are in fact but different agents and trustees of the people, instituted with different powers and designed for different purposes."

In my opinion the government of the United States is interested in the matters of inquiry and investigation pending before its executive departments, looking towards the enforcement of its laws in a higher measure of legal obligation, than an ordinary agent is bound by the contract between him and his principal, to perform his duties.

No one would question for a moment that such an agent would be interested, even in a pecuniary sense in the performance of his duty. For failure to do it, legal liability might accrue against him.

I regret that industrious counsel have not been able to call my attention to any adjudication of any court on the
392 direct question now under consideration. So far as I know the particular feature of Section 1782, now under consideration, has never been adjudicated by any court of the United States. In the absence of the aid of any prior adjudication I have now given the statute in question such interpretation as its language, taken in connection with the obligations imposed by the Constitution and laws upon the executive department of the United States, seem to me to require.

It follows that in my opinion the United States can be and is interested as charged in the indictment in the matter alleged to have been pending before the post-office department. I think the same conclusion would follow if heed should be given to the ordinary and natural meaning of the word "interested". Its primary meaning is: "to be concerned in a cause or its consequences", and this meaning is the one which ordinarily should be given to legislative enactments.

The demurrer to the indictment must be overruled.

393 Opinion on Motion for New Trial.

In the District Court of the United States for the Eastern Division of the Eastern District of Missouri.

United States
vs.
Joseph Ralph Burton.

Memorandum on Motion for a New Trial.

Adams, Judge.

In reviewing the proceedings taken at the trial of this action, I conclude as follows:

First: There was no error in refusing to permit the defendant ten challenges. Section 1782 under which the indictment was found, denominates the offense as a misdemeanor. Therefore Section 819 of the Revised Statutes, as interpreted by Bannon and Mulky vs. United States, 156 U. S., 464; Regan vs. United States, 157 U. S., 303; Harrison vs. United States, 163 U. S., 140, confers the right to three challenges only.

Second: The letters and enclosures sent by different persons to the Postmaster General concerning the business and conduct of the Rialto Grain & Securities Company, were admissible on two grounds:

First: As evidence showing that a matter was pending before the Department, as charged in the indictment, and

Second: As showing the nature of the matter so pending, to be as charged in the indictment, especially that the matter was of such a character as might under the provisions of Section 3929 R. S., as amended, lead the Postmaster General to forbid the use of the mails to the Rialto Grain & Securities Company.

Third: No error was committed in admitting letters written by the defendant to the attorney of the Rialto Company, or letters from the attorney to the defendant, or telegrams passing between the two last mentioned. This evidence tended to show the nature of the original employment of the defendant by the Rialto Company, and also tended to
394 show what the actual services were, and also tended to show (which is more important) the actual services which were rendered by the defendant to the company, and particularly tended to show that they were services rendered before the Department in the matter of the inquiry then pending before the Department.

There was testimony given by the witnesses as to the defendant's visits to the Department, and services rendered by him there; but such was not all the services the letters and tele-

grams passing between the defendant and the Rialto Company tended to show. They contained admissions made by the defendant with respect to what he had done in the Department, and with respect to what he had accomplished by his actions in the Department. These admissions were of course competent evidence against him, and tended to elucidate the purpose of the defendant in visiting the Department.

Moreover it cannot be said that the defendant never was in the Department, or before any of the officers of the Department, at any other times, or under any other circumstances than those disclosed by the testimony of witnesses which were produced. It may be true, and in the light of the correspondence it seems as if it were true, that the defendant accomplished much more in the Department, either directly or indirectly, by ways and means which were not brought out in detail, than what was disclosed by the oral testimony of witnesses. His own admissions contained in his letters, strongly indicate that he employed some other means for obtaining his information and accomplishing his purposes, than those disclosed by the witnesses actually produced.

The letters, telegrams, interviews and circumstances all should have been, and doubtless were taken into consideration by the jury in determining the issues submitted.

Fourth: The evidence concerning the actual transaction between Burton and the Rigg's bank, and of the general course of business, both of that bank, and other banks in Washington, was admissible in determining the intent and purpose and understanding of the defendant and the bank's officers, at the time he deposited his checks. A general custom is not only evi-
dence of the fact of such custom, but it is also evidence
395 from which the jury may infer knowledge on the part of
any person dealing in matters relating to the custom.

Fifth: The contention that there was no evidence that defendant's services rendered before the Department had any tendency to induce, or did induce the Postmaster General to act favorably to the Rialto Company in a matter pending before the Department, as to whether a fraud order should be issued, is in my opinion, not warranted by the proof.

Section 3929 of the Revised Statutes, as amended, together with the Rules and Regulations of the Post-Office Department in evidence, clearly show that the purpose of the inquiry pending before the Department, could be nothing else than to determine whether the Postmaster General should forbid the use of the mails to the Rialto Company. The law authorized him to take no other action in the event he found that the Rialto Company was engaged in a fraudulent business, except to issue the so-called fraud order. The defendant knew the law, and it is

certainly a fair and reasonable inference from the facts disclosed by the proof, in relation to defendant's services and conduct before the Department, that he intended them to have the effect of inducing the Postmaster General, not to do the thing which alone he might do as the result of the investigation. The Postmaster General and his subsidiary officers should be presumed to conduct their inquiries and investigations for some purpose, and the defendant can fairly be presumed to have intended that the officers of the Department were conducting the inquiry or investigation for some purpose, and that the purpose, as already indicated, under the law, could be nothing else than to determine whether a fraud order should be issued. All persons are presumed to intend the natural consequences of their conduct.

The bare fact, if it be a fact, that the defendant did not in terms ask any of the officers of the Post-Office Department to refrain from issuing a fraud order, or that he did not in fact express any wish to that effect, cannot conclude the inquiry on the important issue now under consideration. It is obvious
that the most diplomatic way of accomplishing that re-
396 sult would be to adopt a much less pronounced and emphatic course. The statement that the officers of the Rialto Company were honorable men, and desired to do nothing wrong, would seem to be a much more persuasive argument in favor of not issuing a fraud order, than a direct appeal to that effect.

Sixth: The jury had a right, not only to hear and take the oral testimony into consideration, but to draw any and all fair and reasonable inferences from established facts. I think nothing went to the jury that did not in some way bear upon, either the relation of the defendant to the Rialto Company, or to the services which he was actually rendering that company.

Seventh: The defendant cannot, in my opinion justly complain, at the refusal to give any of the requests which were in fact refused: The charge itself, and the requests given, present the issues of facts submitted to the jury in a light fully as favorable to the defendant as the case warranted.

Eighth: The exceptions to the main charge, in so far as it related to questions which were disposed of by the demurrer, involve the true construction of Section 1782 R. S., and need no further consideration here than a reference to the opinion of the court on the demurrer. I now see no reason for changing that opinion.

Ninth: The contention that the court erred in its supplemental charge to the jury, based upon the inquiries addressed

to the court by the Foreman of the Jury, is in my opinion, without merit.

The jury retired on Saturday evening, the 26th of March, and on retiring received from the court a clear copy of the original charge, and of all the instuctions given at the instance of the defendant. These remained in the possession of the jury, which was kept together in the custody of the Marshal, until Monday morning at ten o'clock. Upon giving the instructions so called after the charge, the court told the jury that it gave them in connection with the charge, as amplifying the same. No objections were made by counsel at the time of the giving of the instructions to anything that was said by the court in re-
397 lation thereto, and no request was made by counsel for any additional directions to the jury, concerning these instructions. They were given to the jury as part of the charge, without objection and without criticism by counsel, as to the manner of giving them and were in the possession of the jury, and undoubtedly subject to their careful consideration for thirty-six hours.

After this lengthy consideration of the case, a communication was sent to the court by the Foreman of the Jury, indicating two particulars in respect of which a juror desired further instructions. The jury was brought into court; the communication read; and further instructions as to those two points, were given by the court in such way and manner, that no objection or exception was made thereto.

After giving the instructions on the two propositions submitted, the court took occasion to say to the jury as follows:

"I feel as though it is proper for me to state to you here that there could not be, in my opinion, from my observation of the character and appearance of this jury, or from a consideration of the attention which they gave to the trial, any better jury found anywhere to pass upon the questions of fact which have arisen in this case. Another trial of this case which would have to follow in case of failure to agree, would simply require all these proceedings to be had before some other jury, and it is doubtful whether the case can be presented as to all the facts connected with it, so as to give you more light, or any jury more light than has already been given by the proceedings in this case. The trial of such a case is attended with great expense and great trouble to many witnesses and to the Department and to the court, and another trial ought not to be required unless with faithful con-

scientious consideration of the facts under the law as laid down by the court you should fail to reach a verdict. It seems to me you ought to go over the matter faithfully considering it, especially in the light of the difficulties which have been suggested here now."

Thereafter the court asked the Foreman how the jury stood
numerically, and was informed that it stood eleven to
398 one. After being so informed the court said as follows
to the jury:

"*That although the* verdict must be the verdict of each individual juror, and not a mere acquiescence in the conclusion of his fellows, yet they should examine the question submitted with candor and with a proper regard and deference to the opinions of each other; that it was their duty to decide the case if they could conscientiously do so; that they should listen with a disposition to be convinced, by each other's arguments; that if much the larger number were for conviction, a dissenting juror should consider whether his doubt was a reasonable one which made no impression upon the minds of so many men, equally honest, equally intelligent with himself. If upon the other hand, the majority was for acquittal, the minority ought to ask themselves whether they might not reasonably doubt the correctness of a judgment which was not concurred in by the majority."

The court further in conclusion said to the jury:

"I have made these remarks to you knowing and feeling confident that your sole and only purpose is to reach a righteous conclusion in the case. I know you feel and wish to be and are honest men, and I make these remarks to you with a view of enabling you to retire to the jury room and in the light of the explanation of the two supposed troublesome questions, and in the light of the further comment which the court has made, to ask you to make a serious attempt to arrive at a verdict in the case."

The jury were then told to retire, and the court delivered to the Foreman the copy of the main charge, together with the instructions which had been given at the instance of the defendant at the close of the case. After the jury retired, the defendant's counsel noted an exception to the charge of the court as just then made.

In the fore-part of this supplemental charge, the court did nothing but reiterate and explain the propositions, which it fully announced in the original charge and instructions, in relation to the two troublesome questions submitted, namely; whether the defendant's employment as general counsel

399 prohibited him from rendering services before the Post-Office Department, and also whether the bare fact that the Post-Office Inspector at St. Louis reported favorably, to the Rialto Company upon the first two complaints made against the company, would require a verdict of not guilty at the hands of the jury.

There was nothing said to the jury by way of explaining the principles of law governing the two questions submitted, that had not already been said in the main charge, and no different principle of law was announced, and in the subsequent phase of the supplemental charge calling the attention of the jury to the great expense and trouble attending a trial of such a case, and to the consideration to which the jury had obviously given to all the evidence as it had been produced, and to the advisability of not requiring another trial "unless with a faithful conscientious consideration of the facts, under the law, as laid down by the court, the jury should fail to reach a verdict," which was not in full accord with the usual practice of this and all other federal courts, and which had not received the full sanction of courts of controlling authority. The court in that connection told the jury that they ought to go over the matter again, faithfully considering it in the light of the difficulties which had been explained. Certainly counsel familiar with the practice of the courts, as defendant's counsel have long been, could have no just criticism to make concerning such suggestion.

The next phase of the supplemental charge in which the jury was told that a "dissenting juror should consider whether his doubt was a reasonable one, which made no impression upon the minds of so many men, equally honest, and equally intelligent with himself," announced no new proposition, either of law or practice.

The phases of the supplemental charge just alluded to, have the full sanction and approval of the Supreme Court of the United States, in the cases of Allen vs. United States, 164 U. S., 492, 501, and cases therein cited; Allis vs. United States, 73 Fed., 165, 182, and in Allis vs. United States, 155 U. S., 117.

400 At the conclusion of the supplemental charge to the jury, the court, deeming it unseemly to permit any discussion by counsel in the presence of the jury, declined to hear counsel until the jury retired from the room. Afterwards upon the invitation to counsel to state any exceptions they might have to the supplemental charge, the exception already referred to, "namely; to the charge of the court made now" was duly made and allowed. Afterwards the court was

requested to indicate to the jury that the requests to charge, which were recognized and given by the court were as much a part of the court's charge, as that which was involved in the main charge itself, with the statement by counsel that the instructions ought to be called to the attention of the jury. The court declined to call the jury back, either to indicate what was suggested, or to call the jurys' attention to the instructions, which were given at the instance of the defendant,—for these reasons:

First: Because the court had on the previous Saturday, said to the jury, that those instructions were given in connection with the charge, as perhaps more fully amplifying it.

Next, Because those specific instructions had been in the hands of the jury at all times during their retirement, and were again given by the court to the Foreman of the Jury, upon their retirement at the conclusion of the supplemental charge.

From these facts the court believed that the jury necessarily understood that the specific instructions were to be taken by them in connection with the charge, and to be considered by them as part of the court's instruction.

Next, The court believed that by making special reference to those specific instructions, the jury's attention would have been improperly directed to certain phases of the total instructions, to the exclusion of the main and exhaustive instructions found in the charge itself.

Next, After the jury had been in retirement for thirty-six hours or more, and had requested instructions only on two well marked and defined phases of the case, the court had reason to believe, and did believe that those phases of the case were the only ones about which the jury desired further instructions.

401 Next, The important features of the requests were fuly covered by the main charge.

All considered, the court was then of the opinion that any further comments besides those made to the jury in answer to their specific requests, and those suggestions already referred to, would necesarily work confusion and disadvantages to the jury "in the effort in making a serious attempt to arrive at a verdict in the case," which the court admonished the jury to make.

After making a careful and conscientious review of all the proceedings at the trial, I am satisfied that the defendant has had a fair and impartial consideration of the charges made

against him in the indictment, and that the law from the beginning to the end of the trial, was declared as favorably to him, as the case warranted.

The motion for a new trial will be overruled.

UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri, } ss:

I, James R. Gray, clerk of the district court of the United States, in and for the eastern division of the eastern judicial district of Missouri, do hereby certify the writing hereto annexed to be a transcript of the record and proceedings with all things concerning the same in case No. 4992 of The United States, plaintiff, against Joseph Ralph Burton, defendant, as fully as the same remain on file and of record in said case in my office, and that the original writ of error and citation are hereto attached and herewith returned.

In witness whereof, I hereunto subscribe my name, and affix the seal of said court, at office in the city of St. Louis, in said district, this 3rd day of August, in the year of our Lord nineteen hundred and four.

{ Seal of the United States District Court, Eastern Division of the Eastern Judicial District of Missouri. }

____ ____,
Clerk of said Court

Endorsed on cover: File No. 19,443. E. Missouri D. C. U. S. Term No. 343. Joseph Ralph Burton, plaintiff in error, *vs.* The United States. Filed August 16", 1904. File No. 19,443.